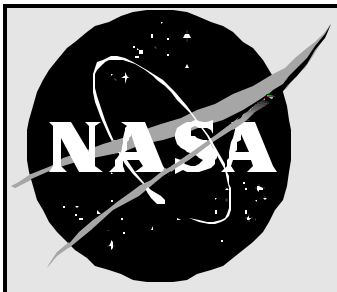

NASA DESK GUIDE

on

Pay-Setting

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Chapter 1

INTRODUCTION AND OVERVIEW

1-1. Purpose

The purpose of this guide is to provide a comprehensive reference to assist users to set pay in NASA. The guide provides in depth coverage of many topics. However, users should also refer to applicable laws, regulations, and NASA issuances when making pay decisions. Advice is available from the Personnel Policy Branch, Office of Human Resources and Education.

NOTE: Unless otherwise stated, pay rates cited in this document are the 2000 rates. Current pay tables are located at **http://www.opm.gov/oca/payrates/index.htm**.

1-2. Importance of Pay Setting

Pay setting is one of the most important functions of a personnel specialist. When done properly, it can help to motivate employees, but when done improperly, it can be a major cause of dissatisfaction. Correcting pay errors can be extremely time consuming and difficult.

Pay must be set in accordance with laws, regulations, and NASA issuances. In addition, it is important that laws and regulations be interpreted and applied in the manner that will provide the maximum benefit to our employees.

1-3. Legal and Regulatory Framework

1-3-1. Laws

The Federal pay system is based on laws passed by Congress. Most of these laws are codified in Title 5 of the United States Code (USC). Most of the pay laws are in chapters 53 to 59 of Title 5. NASA has some of its own pay authorities authorized in the Space Act and codified in Title 42. In this guide laws will be referred to with the title and section number. For example 5 USC 5301 refers to section 5301, which is the first section in chapter 53 of Title 5 of the United States Code.

1-3-2. Executive Orders

The President has wide authority to issue Executive Orders on many different subjects. These orders are numbered sequentially. Occasionally one of these orders

will pertain to pay. For example, each year, the President issues an Executive Order that announces the following year's increases for the General Schedule (including locality pay) and other pay systems. Although they may not contradict laws, they have the force of law.

1-3-3. Regulations

The Office of Personnel Management (OPM) has been given the authority to issue regulations to implement the pay laws. These regulations are codified in Title 5 of the Code of Federal Regulations (CFR). Most of the pay regulations are contained in parts 530 to 595 of Title 5 of the CFR. In this guide, regulations will be referred to by their title, part, and section numbers. For example, 5 CFR 531.203 refers to section 203 of part 531 of Title 5 of the Code of Federal Regulations.

When OPM proposes new or revised regulations, the proposals are published in the Federal Register. Agencies and other interested parties have the opportunity to comment on the proposal before it is issued as a final regulation. Proposed regulations are not effective until published in the Federal Register as interim or final. Centers should submit comments to the Office of Human Resources and Education for consolidation and submission to OPM. When OPM makes a final decision, the final regulation is published in the Federal Register. OPM may also issue interim regulations. These are issued in situations where there is a compelling need to make the regulation effective immediately. Even though the regulation is effective, agencies and other interested parties have the opportunity to comment before the regulation is made final.

1-3-4. Comptroller General Decisions

Prior to 1996, the Comptroller General (CG) was the final authority on Federal pay matters. The CG is the head of the General Accounting Office (GAO) which is an Agency in the legislative branch of the Federal government.

The CG rendered decisions on pay issues brought to him by agencies or employees. These decisions interpreted laws and regulations, and agencies were and are still required to follow them until and unless they are overturned. These decisions were published in bound volumes each year, and there were also "unpublished" decisions which were not contained in the volumes but which still had the same force as the published decisions. Published decisions are cited by the volume number and the page number. For example, 60 CG 801 would be found on page 801 of volume 60. All published and unpublished decisions can be cited by a number beginning with the letter B followed by 6 numbers. GAO also published the Civilian Personnel Law Manual covering compensation, leave, relocation, and travel. The manual contained discussions of a wide variety in these areas, and for each topic provided citations and

summaries of pertinent CG decisions. These decisions are available through various legal research services such as Personnet, and many are available on GAO's web site, (http://www.gao.gov). Decisions can be located through other sites such as the Government Printing Office (**www.gpo.gov**).

In 1996, the authority to issue decisions on most pay matters was transferred to OPM. OPM publishes its decisions on its web site (**www.opm.gov**) . Unless a CG decision has been overruled, it must still be used and may be cited as a proper authority.

In 1992, GAO issued decision B-222926.3, which stated that the CG would not decide matters covered by a negotiated grievance procedure. OPM has maintained this position (5 CFR 178.101(b)). Thus, if a bargaining unit employee raises a pay issue and is not satisfied with NASA's decision, he/she may not file a claim with OPM. Rather, he/she must file a grievance under the negotiated grievance procedure.

Centers wishing to obtain a formal ruling on a pay matter from OPM should contact the Office of Human Resources and Education.

1-3-5. NASA Issuances

Agencies have the authority to issue policies, instructions, or procedures to supplement law or regulation, but they may not contradict the law or regulation. NASA's policies are published in NASA Procedures and Guidelines (NPG's), which have the force of regulations. If NASA has not issued a policy or procedure, Centers have discretion to develop their own policies and procedures, which must conform to laws and regulations.

Most of NASA's policies related to pay can be found in NPG 3530.1. NASA Policy Directive (NPD) 3000 delegates authority for most pay actions to Center Directors and the Associate Administrator for Headquarters Operations. With a few exceptions, generally applying to the Senior Executive Service (SES), these officials are permitted to redelegate these authorities to other officials.

1-4. Pay Setting Process

As is the case with many personnel functions, the pay setting process involves exercising both personnel management and administration authorities. For this reason it is important that personnel specialists work closely with managers to set pay equitably and correctly.

For example, it would be the manager who would decide whether he/she wanted to appoint someone above the minimum step of the grade and/or pay that individual a recruitment bonus, and it would be the personnel specialist who would ensure that

the requirements for exercising these authorities have been met. The personnel specialist can also suggest alternatives if the flexibility which the manager wishes to use is not appropriate. Although the Federal pay system is governed by a wide variety of laws and regulations, much flexibility have been added to it during the last few years, and it is the personnel specialist's responsibility to help managers meet their needs
by taking full advantage of all the existing options.

1-5. Relation of Classification and Qualifications to Pay

Most employees are in pay systems that are position-based. This means that basic pay is determined by the classification of the duties and responsibilities of the position to a particular grade or pay level regardless of the qualifications of the employee. The intent of this system is to ensure that there will be equal pay for equal work.

For example, once a General Schedule (GS) position is classified based on the duties assigned by management, the grade and therefore the pay range are established for that position. Of course, management could decide to increase the grade level by adding higher-level responsibilities or reduce the grade by removing some grade-controlling duties.

While a position-based system has the advantage of fostering pay equity, it sometimes makes it difficult for an Agency to meet its needs by taking into account special qualifications or contributions of an individual. For this reason there have been many proposals to reform or replace the General Schedule with a more flexible system, and several agencies have been permitted to conduct demonstration projects using systems that are less dependent on the specific duties of a position and give greater weight to the qualifications, skills, or contributions of individual employees.

In the absence of wholesale reform, a variety of changes beginning with the Federal Employees Pay Comparability Act (FEPCA) have been enacted to provide agencies increased flexibility to meet their needs without totally abandoning the position-based pay system and the concept of equal pay for equal work. For example, superior qualifications appointments permit NASA to make new appointments at any step of the grade, (see Chapter 2). Recruitment bonuses permit new appointees to receive a lump sum payment of sup to 25% of the basic salary level for the grade and step to which the individual is appointed (see Chapter 2). Retention allowances permit an employee who would otherwise leave NASA for the private sector or just to retire to receive payments up to 25% of their basic salary (see Chapter 14).

Longevity and performance can change the amount which employees in the same grade are paid. Employees who remain in the same GS grade for a long time will

have their salaries increased as they progress through the steps of the grade. The awarding of quality step increases for outstanding performers can accelerate this process. (See Chapter 12.)

1-6. Pay Systems

1-6-1. Introduction

Pay is set using the rules that apply to the pay system covering the position. Federal employees are covered by a variety of pay systems. Most NASA employees are in positions covered by the General Schedule (GS). A few GS employees are still covered by the performance Management and Recognition System (PMRS), which officially "sunsetted" in 1993 (see
Chapter 9 for complete information on this system and how to set pay for employees covered by it). Others are in positions covered by the Federal Wage System (FWS) or are in the Senior Executive Service (SES). A few employees in the Agency receive "administratively determined" pay like those employees in high-level Scientific and Professional (ST) positions, Other Senior Level (SL) positions, and those in NASA Excepted positions.

1-6-2. General Schedule (GS)

The Classification Act of 1949 established the General Schedule. As explained in section 1-5, it is a position-based system with grades based on the duties and responsibilities of the position. The Classification Act defines each grade level, and based on these descriptions, OPM issues classification standards for job series and grades.

Employees in the General Schedule work in professional, administrative, technical, and clerical occupations. Often the General Schedule is said to cover white-collar positions as opposed to the Federal Wage System, which covers blue-collar positions.

There are 15 grades, and each grade has 10 steps. At one time there were 18 grades, but the SES and other senior level positions have replaced grades 16 to 18. There is one General Schedule, but with the passage of FEPCA, the United States was divided into locality pay areas. Depending on where a position is located, an employee's basic GS pay is increased by the percentage for that locality. Chapter 5 explains locality pay.

Special salary rates for GS positions may be authorized when significant recruiting and/or retention problems are caused by substantially higher private sector pay for comparable work, for example engineering and medical officer positions. OPM also may establish special salary rates for positions at remote work sites or with undesirable working conditions. Special salary rates are reviewed at least annually

and adjustments made as warranted by existing labor market conditions and Agency staffing needs. Special rate scales have 10 steps, but the first step of the grade can be as much as 60 percent higher than the first step of the normal GS grade, and the other steps are correspondingly higher. Chapters 3 and 4 explain how to set pay for employees moving in an out of special rate positions.

1-6-3. Federal Wage System (FWS)

The Federal Wage System (FWS) is the pay system covering employees who work in trades, crafts, and skilled and unskilled labor positions. Pay is based on prevailing rates for similar occupations in the geographic area. The FWS has three major pay plans: wage grade (WG), wage leader (WL), and wage supervisor (WS). Like the GS, it is a position-based system. Chapter 17 describes the FWS.

1-6-4. Senior Executive Service (SES)

The Senior Executive Service (SES) covers employees who work in top management positions classified above grade 15. It does not include Presidential appointees. The SES consists of six pay levels with a pay plan designation of ES. Unlike the GS and FWS, it is intended to be a rank in person system. Once it is determined that a position is appropriately placed in the SES, the employee can be assigned to any of the six pay levels depending on his/her qualifications and contributions. The maximum payable rate is equivalent to level IV of the Executive Schedule, which for the year 2000 is $122,400. When locality pay is included, the maximum pay for SES employees is level III of the Executive Schedule, which for the year 2000 is $130,200. Chapter 16 explains various upper limits on pay. Pay levels for SES employees are recommended by Center Directors and must be approved by the Administrator.

1-6-5. Scientific and Professional Positions (ST)

A small group of high-level professional and scientific positions in the competitive service is treated separately for pay purposes. These positions must be engaged in research and development in the physical, biological, medical, or engineering sciences, or a closely related field. Salaries are set by Agency heads, at a minimum of 120% of the base pay rate for step 1 of GS-15 and cannot exceed the rate of basic pay payable for Level IV of the Executive Schedule, which for 2000 is $122,400. The pay plan designation is ST.

1-6-6. Senior Level Positions (SL)

Senior level positions are high-level positions that can be in either the excepted or competitive service. They are positions that exceed GS-15 but are not part of the SES. The Administrator sets rates for senior level positions, and like ST positions fall

between 120% of base pay for step 1 for GS-15 and Level IV of the Executive Schedule, which is $122,400 for the year 2000. The designation for these positions is SL.

1-6-7. NASA Excepted Positions (NEX, AD)

NASA's Space Act authorizes the Agency to fill up to 425 excepted positions. The NASA Administrator, who also must approve the use of this authority to fill a position, administratively determines the pay for these positions. Generally, authority is approved for positions where special recruitment needs make it impractical to use the usual classification system to establish, staff, and compensate a position (e.g., in order to offer a higher salary to a world-class scientist). The maximum payable rate is equivalent to Level IV of the Executive Schedule, which for the year 2000 is $122,400. The pay plan designation is AD. These positions are often referred to as NEX positions. They may not be used to fill a job that is appropriately classified in the SES.

1-6-8. Executive Schedule (EX)

The Executive Schedule is established by law. It has five levels ranging from Level I to Level V. In the year 2001 the salary rates for it are as follows:

I. $161,200
II. $145,100
III. $133,700
IV. $125,700
V. $117,600

NOTE: The 2000 rates are used throughout this guide, with the exception of Chapter 17, Pay Caps. The current rates may always be found at www.opm.gov. For information purposes, the 2000 rates were:

I. $157,000
II. $141,300
III. $130,200
IV. $122,400
V. $114,500

Cabinet officials and other high-level Presidential appointees are in the Executive Schedule. For example, the Administrator of NASA is at level II, and the Deputy Administrator is at Level III.

The pay designation for employees in the Executive Schedule is EX.

1-7. General Pay Rules

Five primary rules govern pay setting. They are:

1. ***Pay is set using the pay setting regulations and directives of the pay system to which the employee is moving.***

For example:

If an employee is moving from a WG position to a GS position, GS pay setting regulations and directives must be used. If an employee is moving from a GS position to an SES position, SES pay setting regulations and directives must be used.

2. ***Pay is set using the pay setting directives for the action that is taking place.***

For example:

If a person is being given a new appointment, pay setting regulations and directives for new appointments must be used. If an employee is being promoted, pay setting regulations and directives for promotions must be used.

3. ***Pay cannot be set at a rate below the first step or the lowest rate of a grade.***

4. ***Pay cannot be set above the top step or highest rate of a grade unless authorized under grade and pay retention regulations*** *(see Chapter 7).*

5. ***Pay on simultaneous actions is generally set in the order that gives the employee the maximum benefit. This means that if an employee is entitled to two pay benefits at the same time, they will be processed in a way that gives the employee more money.***

For example:

If a GS employee is due a within grade increase and a promotion on the same date, the within grade increase is calculated first, and the two step promotion rule is then applied using the employee's new step as the base. This often results in the employee being place in a higher step in the new grade than would otherwise be the case. Chapters 4 and 12 provide additional information on this situation. The only exception to this rule concerning the processing of simultaneous actions is that when there is a general pay increase, it must be processed before other actions.

Subsequent chapters of this guide will provide additional explanations and examples of these rules and exceptions

Chapter 2

PAY SETTING FOR INITIAL APPOINTMENTS

2-1. Introduction

This chapter covers:

- The rules for setting pay when an individual receives an initial appointment to the Federal government
- Appointments above the minimum step of the grade
- Recruitment bonuses
- Pay for critical positions.

2-2. Authority

a. Law authorizing appointments above the minimum: 5 USC 5333
b. Law authorizing recruitment bonuses: 5 USC 5753
c. Law authorizing pay for critical positions: 5 USC 5377
d. OPM regulations concerning determining rates for special rate employees: 5 CFR 530.306
e. OPM regulations concerning appointments above the minimum: 5 CFR 531.203
f. OPM regulations concerning recruitment bonuses: 5 CFR 575.101 to 109
g. NASA policy on appointments above the minimum and recruitment bonuses: Chapters 2 and 4 of NPG 3530.1
h. NASA policy on pay for critical positions: NPG 3537.1

2-3. General Rule

The general rule is that persons receiving initial appointments to the Federal government are appointed at the first step or lowest level of the grade. For positions for which a special rate has been authorized, appointments are made at step 1 of the special rate schedule, which is higher than step 1 of the regular schedule for the grade.

NOTE: Throughout this document, we will refer to ***"base GS schedule"*** and ***"regular GS schedule."*** These terms are used interchangeably to refer to the nationwide GS schedule, which does NOT include locality rates or special salary rates. In most cases, this schedule is used for setting pay.

For example, an individual appointed to a regular rate GS-11 position in Washington, DC, in the year 2000 would be appointed at step 1 and paid $42,724. An individual appointed to a GS-11 medical officer position for which there is a special rate would be appointed at the first step on the special rate scale and paid $49,626.

2-4. Exceptions

There are two major exceptions to the general rule. Persons with superior qualifications may be appointed above the first step of the grade (section 2-5), and persons with prior Federal service may have their salary set in accordance with the highest previous rate (HPR) rule (see Chapter 3).

2-5. Superior Qualifications Appointments

2-5-1. Purpose

Superior qualifications appointments, also known as appointments above the minimum or advanced-in-hire rates, are designed to help Federal agencies to compete with the private sector to attract applicants with superior or unique qualifications. Although this authority is a valuable tool to help NASA attract the best and the brightest, Centers have a fiscal responsibility to offer the lowest salary necessary to attract a candidate. A superior qualifications appointment should be made when the candidate otherwise would decline the position.

2-5-2. Coverage

Superior qualifications appointments may be made for positions at any grade of the General Schedule, and they may be made for positions with regular or special rates. There is a comparable authority for Federal Wage System positions, which is explained in Chapter 17. These appointments may be made in the competitive or excepted service, and they may be made for permanent, temporary, full-time, and less than full-time positions.

Note: Even though these actions are referred to as superior qualifications appointments, the authority to make them is solely a pay setting authority. It is not an independent authority to make the actual appointment. To use this authority, there must be an independent source of appointing authority such as being within reach as the result of the competitive examining process, being eligible for reinstatement, or being eligible under an appropriate excepted authority such as for attorneys.

2-5-3. Eligibility

To be eligible for a superior qualifications appointment, this must be the first Federal appointment for a perspective employee, or he/she must have a break in Federal service of at least 90 days. For determining what is Federal service, service with the Government of the District of Columbia which began before Oct. 1, 1987, is counted.

Example 2a:

Jack began employment with the District of Columbia Government on September 1, 1987 and continued to work there without a break until July 1, 2000. If a Federal agency wanted to appoint him on July 2, he could not be given a superior qualifications appointment because his employment with the DC Government began before Oct. 1, 1987, and 90 days has not elapsed since the end of his service. On the other hand, if in 1990 Jack had a break of 90 days and then returned to the DC Government and then left on July 1, 2000, he could be given a superior qualifications appointment by a Federal agency on July 2 because his current employment with the DC Government began after Oct. 1, 1987.

Centers should be careful not to give short appointments such as special needs appointments prior to making an appointment for which they would like to offer a rate above the minimum step because the temporary appointment will make the individual ineligible for the higher rate.

Example 2b:

On July 1 Jane is given a 30-day special needs GS-12 full-time appointment that ends on July 31. An agency wishing to give her a permanent GS-11 appointment on August 15 may not offer her a superior qualifications appointment because 90 days has not elapsed since the end of her special needs appointment. Because the special needs appointment was only 30 days, the rate she earned under it could not be used as the highest previous rate (see Chapter 3). Thus, she could only be appointed at step 1 of GS-11.

Note: If the appointment were not full-time, she might be covered under exception (f) in section 2-5-5 and then could be given a superior qualifications appointment.

2-5-4. Requirement for Prior Approval

Superior qualifications appointments must be approved prior to an individual entering on duty. Authority to make appointments based on superior qualifications has been delegated to Center Directors. The Associate Administrator for Human Resources

and Education retains the authority for special needs appointments. See below for criteria and documentation.

Example 2c:

Cindy entered on duty on September 1 believing that she would be appointed at GS-13 step 4, but unfortunately the personnel office had not approved the higher rate. She must be paid at step 1.

The Agency may seek a variation from OPM to permit Cindy's pay to be set at step 4. If the variation is approved, her salary may be increased after the date of the approval, but the increase may not be made retroactively.

2-5-5. Exceptions to the 90-Day Rule

There are certain types of service that do not block the use of the superior qualifications authority regardless of whether they occur immediately before the appointment is made. They are:

a. Employment with the District of Columbia Government that began on or after October 1, 1987 (see example 2a above). This is because on that date, the DC government established its own independent personnel system and therefore is now treated like any other non-Federal entity.
b. Employment under an appointment as an expert or consultant under 5 USC 3109; (Note: some agencies use authorities other than 5 USC 3109 to appoint experts and consultants, and these appointments would prevent the use of the superior qualifications authority if 90 days has not elapsed. However, salaries earned under these other authorities may be used as the highest previous rate (see Chapter 3).)
c. Employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree;
d. Employment in a student career experience program ("co- op") under a Schedule B appointment made in accordance with section 213.3202(b) of Schedule b;*

* It is possible to give a student an advanced step upon entering the student program, and

again upon conversion to a permanent appointment.

e. Employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service;
f. Employment which is neither full-time employment nor the principal employment of the candidate (for example, if an individual serves on a Federal advisory committee which meets only a few days a year, this service would not block the use of the superior qualifications authority); or
g. Employment under the Intergovernmental Personnel Act.

2-5-6. Criteria

A superior qualifications appointment may be based on either(1) a combination of superior qualifications and a need to match current income or a job offer or (2) a special need of the Government.

2-5-7. Superior Qualifications

A superior qualifications determination may be based either on the relevance of the candidate's experience and education to the particular work he or she will do, or on the quality of the candidate's accomplishments compared to others in the field. In determining what would be expected of any well-qualified candidate and what would make a candidate superior, an Agency need not apply an absolute standard but may consider the overall quality of candidates available and the particular requirements of the position being filled. If many candidates showed high-level experience or education directly pertinent to the position, a superior candidate might be expected to demonstrate an outstanding reputation in the field through publications, lectures, or leadership roles in professional organizations. On the other hand, when there is a shortage of qualified applicants, a candidate may be found to be superior without having unusual accomplishments, based on a finding that he or she is better able to perform the needed work than other candidates who were recruited or who could reasonably be expected to respond to renewed recruiting efforts. A higher step would be appropriate if the candidate otherwise would decline the position.

For example, if after reasonable recruitment efforts, a Center is only able to locate one qualified candidate, it would be reasonable to determine that he/she has superior qualifications (assuming the candidate would not accept the position unless a higher step is offered). Also, when determining what constitutes superior qualifications, the grade level must be considered. For example, it would not be reasonable to expect that an applicant for a GS-7 position would have publications or other recognition that might indicate superior qualifications at the GS-15 level. Nevertheless, the GS-7 applicant may have superior qualifications when compared with other applicants for that grade level.

2-5-8. Matching Income

The fact that an individual has superior qualifications by itself is not sufficient to justify an appointment above the minimum. It must be shown that accepting the appointment at the first step of the grade would cause the applicant to forfeit existing income or income which he/she is likely to earn. In addition to salary, other factors may be considered.

Salary

The simplest situation is when an individual is clearly earning a salary that exceeds the first step of the grade, and he/she makes it clear that NASA's offer will not be accepted unless the current salary is matched. If a salary falls between two steps, Centers may offer the higher step. *It is not appropriate to offer a higher step merely to match existing salary. The record must reflect superior qualifications and the fact that the candidate declined a lower salary.*

However, if the applicant is requesting a salary that substantially exceeds his/her existing salary, Centers must be sure to document the basis for the increase. The following discussion provides some rationales for offering salaries that at first may appear to substantially exceed an applicant's current salary but in fact would be justified.

Fringe benefits

Fringe benefits may be considered if they substantially exceed the Government's benefits package.

Example 2d:

John is earning $40,000 per year, and his company pays 100% of his health and life insurance premiums. To obtain comparable health and life insurance in the Federal government, he will have to pay $3,000 per year in premiums. Therefore, it would be proper to use a figure of $43,000 ($40,000 plus $3,000) when determining the salary that should be matched.

It would not be proper to consider fringe benefits that it is illegal for the Government to provide, for example, transportation to and from work.

Cost of living

Differences in the cost of living may be considered. Salaries that appear to be the same may be significantly different if differences in the cost of living are included.

Example 2e:

Karen is considering an offer of a GS-12 position at Ames. She is currently earning $53,000 in another part of the country where the cost of living is 10% lower than the Silicon Valley. For this reason, she cannot accept step 1 of GS-12, $54,003. Because of the vast difference in the cost of living, her current salary is approximately equivalent to a salary of $58,300 at Ames. Therefore, it would be appropriate to offer her step 4 of GS-12, $59,403.

Other sources of income

In addition to their primary incomes, applicants may have other sources of income such as consulting fees. When accepting a Federal position, they may have to give these up, perhaps because of conflict of interest provisions or scheduling problems. If it is the Federal employment that will cause applicants to give up these sources of income, that income may be considered when determining the appropriate salary to offer. The income should not be considered if applicants will not have to give it up when accepting a Federal position.

In most cases, investment income should not be considered when determining the appropriate salary. However, there may be situations where conflict of interest laws may require that an applicant sell stock or an interest in a property. In these cases, the lost income can be considered.

If an applicant can demonstrate that he/she regularly is paid for a certain amount of overtime, the amount that he/she receives may be considered.

If an applicant can demonstrate a consistent pattern of receiving bonuses or pay increases, these may be factored in when considering the income that would be forfeited.

Example 2f:

Clark earns a base salary of $60,000. For the past several years, his company has paid out a 10% bonus in December. If he accepts a position with NASA in August, he will not be eligible for that bonus. It may be considered, and therefore, the income that he would be giving up is $66,000 ($60,000 plus 10% of $60,000).

Income from work on a less than full-time basis

If an individual does not have a salary but earns income from consulting fees or other work that is less than full-time, Centers should try to examine the pattern of earnings over several years. The existence of one big contract should not necessarily be used to calculate the income that the applicant would be giving up. On the other hand, if he/she can show that this level of income is likely to continue, it should be considered. Steady increases in income may also be taken into account.

Example 2g:

Kathy began an independent consulting business in 1997, when she earned $30,000. In 1998, she earned $40,000, and in 1999, she earned $50,000. In the first half of 2,000 she has already earned $30,000. Therefore, it would be appropriate to use an income of $60,000 ($30,000 times 2) when determining the income that she would be forfeiting.

Seasonal or part-time work

It is not appropriate to prorate a salary that is earned on a part-time basis. For example, if a teacher earns $45,000 for 9 months of work, it would not be appropriate to increase that salary by 1/3 to account for the 3 months when he/she is not working. On the other hand, if during those 3 months, he/she earns an additional $10,000 by teaching summer school, that income should be included.

It is not appropriate for Federal agencies to use the superior qualifications authority to compete with each other. Thus, for example, if an individual has earned his/her primary income as a Federal consultant under 5 USC 3109, it would not be permissible to use those earnings to justify an appointment above the minimum.

Private Sector Offer

There may be situations when an individual has a private sector offer that is substantially higher than his/her recurrent income. In these situations, the job offer may be considered. In most cases, the job offer should be documented in writing.

Example 2h:

Ken is being offered a GS-14 position at GSFC. He is currently earning $68,000. However, he has a job offer from a private company that would pay him $76,000. Therefore, it would be appropriate to offer him step 3 ($76,750).

Situations can arise where it would be improper for an applicant to negotiate a firm employment offer with a private sector company if, for example, the Federal position which he/she is considering has contracts with that company. On the other hand, if he does not take the Federal position, it is clear that he would receive an offer. In these situations, it would be appropriate for a NASA supervisor or personnel specialist to contact the company and determine what the offer would be. In this case, that offer could then be used when considering the appropriate salary to match.

No salary information

Sometimes an applicant who wants to come to work for NASA is not currently earning a salary commensurate with her qualifications and does not have a specific job offer in hand. Nevertheless, there may be a clear indication that the candidate could command a high salary. This is often the case with persons who have just completed school or persons who may have been working for a nonprofit organization. In these cases, it would be counter-productive to require that the individual obtain a firm job offer just so NASA could match it. It would be appropriate for NASA to base its salary offer on the salary that the applicant could reasonably expect to command. This could be based on Bureau of Labor Statistics information, salary surveys conducted by a NASA Center or other Federal Agency, or current recruitment experiences for similar positions.

Example 2i:

Glenna is a doctor, and after completing a residency in neurosurgery and several fellowships, he spent several years volunteering for the Peace Corps. He would like to come to work for JSC in a GS-13 medical officer position. Because of his interest in NASA, he has not sought other job offers, and because he has been volunteering for the Peace Corps, he does not have current income. However, NASA surveys hospitals and universities in the Houston area and finds that they are offering physicians with comparable qualifications $90,000 per year and up. Therefore, it would be appropriate to offer Glen step 10 of GS-13 on the special rate range for medical officer positions, $87,474.

However, it may be possible to consider one of the approaches discussed in this section to determine the appropriate income level to be matched, such as a pattern of earnings from other sources in previous years or a reasonable expectation that the individual could receive an offer from a private sector source.

Example 2j:

For the past year, Carol has earned 100% of her income as a consultant for a Federal agency. She earned $65,000. GRC would like to offer her a GS-13 position. In several years prior to her work for the Federal government, she consulted for private companies, and she expects to return to this work within the next month. Her average earnings were $68,000. Therefore it would be appropriate to offer her GS-13 step 5, $68,375. In fact, it might be appropriate to offer her a little more because when examining income from 2 or 3 years ago, it is permissible to consider it in terms of this year's dollars by increasing it for inflation, as measured by the consumer price index between that year and the current year. Between 1998 and 2000, the consumer price index increased by approximately 3%. $68,000 earned then could be considered to equate to $70,040. Therefore, it might be appropriate to offer her GS-13 step 6, $70,386.

Caution: Centers are reminded that just because income can be matched, a superior qualifications appointment may not always be appropriate. As explained in section 2-5-7, the applicant must also have superior qualifications. Other factors such as the pay levels of current employees should also be considered.

2-5-9. Special Need Criteria

In rare situations, NASA will have a special need for an applicant who would add exceptional value to the Agency but who does not meet one or both of the criteria described in sections 2-5-7 and 8 (does not have superior qualifications and/or is not giving up or foregoing income to accept the position). In these cases, an appointment above the minimum can still be made if it can be demonstrated that the applicant is needed to support NASA's mission or a significant project.

In practice, it is unlikely that an applicant would meet the special need criteria if he/she didn't have superior qualifications. In most cases the special need criteria would be used when the applicant would not be foregoing income equal to the salary that he/she is seeking. In other words, the applicant is seeking a salary substantially higher than existing income or any firm job offers. Note: As explained above, even in many of these cases, the special need authority still does not have to be used because the higher pay still can
be justified on the basis of the salary which an applicant with comparable qualifications could reasonably expect. In the vast majority of cases, a superior qualifications appointment will meet the criteria in sections 2-5-7 and 8.

The Associate Administrator for Human Resources and Education must approve the use of the special need criteria. Centers should submit documentation that explains the special need which the individual will satisfy and why a salary that exceeds

existing income or income to be foregone is being requested. The applicant is not to be appointed until the request is approved, (section 2-5-4).

2-5-10. Relation to Recruitment Bonuses

OPM's regulations require that when considering appointments above the minimum, agencies must determine whether a recruitment bonus could meet the need instead of the appointment at the higher step. This is important because a recruitment bonus is a one-time payment while an appointment at a higher step is permanent.

Example 2k:

Gary is being offered a GS-11 position in Washington, DC. He is currently earning $48,000 and is seeking GS-11 step 5, $48,420. The position has promotion potential to GS-12. If he is appointed at GS-11 step 5, his salary will have to be set at GS-12 step 2, $52,911 when he is promoted and the two-step promotion rule is applied (see Chapter 4). On the other hand, if he is appointed at GS-11 step 1, $42,724 and given a $7,000 recruitment bonus, his overall salary the first year will be slightly higher than GS-11 step 5, but when he is promoted to GS-12, his salary would be set at step 1, $51,204.

There may be situations where the disparity between the employee's current income and the Federal pay scale is so great that both an appointment above the minimum and a recruitment bonus are necessary. This is permitted, but it is important to document both actions thoroughly.

2-5-11. Documentation

Use of the superior qualifications authority may be closely monitored by agencies such as OPM and GAO. Therefore, it is important that Centers thoroughly document all cases.

The documentation must be complete enough to permit reconstruction of the action. Documentation must include:

a. The superior qualifications of the individual or special need of the Agency that justified use of this authority;
b. The factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and
c. The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

2-6. Recruitment Bonuses

2-6-1. Purpose

Recruitment bonuses were one of the flexibilities added by FEPCA. Agencies are permitted to pay bonuses to help in the recruitment of employees who otherwise might not accept Federal employment.

2-6-2. Coverage

Recruitment bonuses may be paid to GS, SES, SL, ST, law enforcement, and Executive Schedule employees. They may not be paid to FWS employees or the head of an Agency including the Administrator of NASA.

Recruitment bonuses may be paid to full or part-time employees, and they may be paid to employees on time-limited appointments (competitive or excepted). However, because of the minimum 12-month service agreement requirement explained in section 2-6-5, the appointment must be for at least 12 months.

Bonuses may be paid only to newly appointed Federal employees or persons with at least a 90-day break since their last Federal employment. The following types of appointments are exceptions to the 90-day rule, and applicants converted from them may be paid recruitment bonuses even if there is no break in service:

a. Employment under the Student Educational Employment Program under section 213.3202 of Schedule B ("co-op");
b. Employment as a law clerk trainee under section 213.3102(e) of Schedule A;
c. Employment while a student during school vacations under a short-term temporary appointing authority;
d. Employment under a provisional appointment designated under 5 CFR 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or
e. Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate. (For example, if an individual serves on a Federal advisory committee that meets only a few days a year, this service would not block the payment of a recruitment bonus.)

2-6-3. Authority

Centers have the authority to approve the payment of recruitment bonuses. However, the Administrator retains the authority to approve them for all SES and ST positions and for positions in his office. Centers wishing to request approval of a bonus for an SES or ST position should submit the request to the Office of Human

Resources and Education accompanied by complete documentation which demonstrates that the criteria described in section 2-6-7 are met.

2-6-4. Requirement for Prior Approval

Recruitment bonuses must be approved before the applicant enters on duty. Once an individual enters on duty, NASA has no authority to approve a recruitment bonus.

2-6-5. Service Agreements

Before a recruitment bonus may be paid, the applicant must sign a service agreement to remain with NASA for at least 12 months. (Note: NPG 3530.1 currently requires a minimum agreement of 12 months. Since the policy was issued, OPM lowered the minimum to 6 months, but the minimum agreement in NASA is still 12 months.) Centers may require agreements that are longer than the 12-month minimum.

An employee who leaves NASA prior to completing the agreement must repay it on a pro rata basis receiving credit for each full month worked.

Example 2l:

Carla received a recruitment bonus of $15,000 and signed a 12-month service agreement. After 6 months and 17 days, she left NASA to go to another Federal agency. Because she did not complete half of her service agreement, she must repay $7,500, which is half of $15,000. She does not receive credit for the excess 17 days because it was not a full month.

An employee who is separated involuntarily not for cause does not have to repay the bonus. This would include a separation for poor performance that does not have a conduct component or a separation by reduction in force. An employee whose position description does not provide for mobility or who has not signed a mobility agreement and who is separated for declining a reassignment to another commuting area would not have to repay the bonus. However, if a mobility requirement is added after the employee is on duty and the employee accepts one reassignment to another commuting area, the declination of a subsequent reassignment to another commuting area would not relieve the employee of the requirement to repay the pro rata share of the bonus.

NOTE: Centers may waive the repayment of a bonus when it is determined that repayment would be against equity or good conscience or not in the public interest. (See NPD 9645.2c: Delegation of Authority to Waive Claims for Erroneous Payment of Pay and Allowances, Travel, Transportation, and Relocation Expenses and Allowances.)

Example 2m:

Kevin received a recruitment bonus and signed a 12-month service agreement. 6 months later, he had to leave NASA in order to move outside the commuting area so that his wife could receive experimental medical care for a life threatening illness. In a case such as this, it would be appropriate to waive the repayment of the pro rata share of the recruitment bonus.

2-6-6. Amount and Payment of Bonuses

Recruitment bonuses are paid in a lump sum. They are not part of basic pay for any purpose. They can be up to 25% of basic pay excluding locality pay or special law enforcement adjustments described in Chapter 10. In other words, the bonus is calculated as a percentage of the basic GS pay scale or of a special rate scale. If an employee is earning a retained rate, the bonus is calculated as a percentage of that rate. If an employee is on a part-time schedule, the bonus is calculated as a percentage of the part-time salary.

Note: it is not likely that too many new employees would have a retained rate because retained pay terminates after a break in service of one day (see Chapter 7).

Example 2n:

Sarah is being hired at GS-9 step 1 for a position at Ames, $37,240. She is being offered a 25% recruitment bonus. Her bonus will be $8,095 or 25% of $32,380, which is the rate for GS-9 step 1 of the basic General Schedule without locality pay. If she were being hired for a part-time position of 20 hours per week, her bonus would be 50% of $8,095 or $4,047.50. If Sarah were being hired as an aerospace engineer, her special rate salary for GS-9 step 1 would be $42,091. In that case her bonus would be 25% of $42,091 or $10,522.75.

A bonus may be paid once it has been approved and the new employee has signed the required service agreement. If these conditions are met, it may actually be paid before the employee enters on duty.

2-6-7. Criteria

Each bonus must be approved by a higher-level official than the recommending official, except where the Administrator is both the recommending and approving official.

In order to pay a bonus, there must be a written determination that in the absence of the bonus, the Center would encounter difficulty in filling the position. Centers may make this determination for a group of positions such as all aerospace engineers at grades 13 and above.

In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

a. The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
b. Recent turnover in similar positions;
c. Labor-market factors that may affect the ability of the Center to recruit candidates for similar positions now or in the future;
d. Special qualifications needed for the position; and
e. The practicality of using the superior qualifications appointment authority alone or in combination with a recruitment bonus.

The fact that a position is hard to fill does not by itself automatically mean that a recruitment bonus is appropriate. Centers must document that the applicant is well qualified and that he/she is not likely to accept the position without the bonus.

You will note that the regulations for superior qualifications appointments and recruitment bonuses both require that the other option be explored. This doesn't mean that one or the other option is favored, but it does mean that agencies are expected to examine the full range of flexibilities before deciding on one or a combination of options.

2-6-8. Documentation

Centers must keep a written record of each determination to pay a recruitment bonus. The records should be complete enough to permit reconstruction of the action including the basis for determining that the position would be difficult to fill

without paying the bonus, the qualifications of the applicant, and the basis for determining that the applicant was not likely
to have accepted the position without the bonus. The documentation should also make note of the possibility of using the superior qualifications appointment authority instead of or in combination with the recruitment bonus. Centers should also maintain copies of service agreements, repayments, and waivers. Documentation on each bonus must be retained for 3 years.

Centers will also maintain the following records: Data on the number of employees to whom bonuses are offered, the percentage of salary offered, the number accepted, funds expended; and for all individuals who are offered bonuses: occupations, disciplines, experience, education levels, grade point averages, and educational institutions attended.

2-7. Pay for Critical Positions

Critical position pay authority may be requested by the Administrator on a case-by-case basis, for use in recruiting and retaining an exceptionally qualified individual for a position that requires an extremely high level of expertise in a scientific, technical, professional, or administrative field; and is critical to the accomplishment of an important NASA mission.

Before recommending use of this authority for a position within NASA and submitting a request to the Office of Management and Budget (OMB), the Administrator must determine that the position could not be filled with an exceptionally well-qualified candidate through the use of other personnel systems and pay authorities.

With the approval of OMB (which consults with OPM), critical pay may be set at any rate up to executive Level I, $157,000 in the year 2000; with the approval of the President, pay may be set above Level I.

At any time no more than 800 positions may be approved for critical pay throughout the Federal government. The authority has rarely been used in the Government.

NPG 3537.1 contains detailed procedures on requesting critical pay in NASA.

Chapter 3

HIGHEST PREVIOUS RATE AND MAXIMUM PAYABLE RATE RULES

Note: Unless otherwise stated, the rates used in this chapter are for the year 2000.

3-1. Introduction

This chapter covers the rules concerning the highest previous rate (HPR) and the maximum payable rate (MPR) as they apply to the General Schedule. There are comparable rules for the Federal Wage System, which are covered in Chapter 17.

The chapter covers the basic principles and procedures surrounding these rules as well as some of the lesser known but important rules related to these subjects.

3-2. Authority

a. Law, rate on change of position or type of appointment: 5 USC 5334
b. OPM regulations concerning determining rates for special rate employees: 5 CFR 530.306
c. OPM regulations concerning highest previous rate and maximum payable rate: 5 CFR 531.203
d. NASA Special Pay and Allowances Provisions: Chapter 1 of NPG 3530.1

3-3. Basic Policy

Agencies have wide discretion in applying the HPR. It is NASA's policy that current Federal employees and persons hired from outside the Agency will be given the benefits of the HPR to the maximum extent permitted by law and regulation.

Regulations allow exceptions in the following situations:

a. Lack of funds;
b. Appointment of a temporary employee;
c. Situations where an employee's prior experience and training has little or no relevance to the position;
d. Internal pay alignment considerations

NASA's policy is to pay a current NASA employee being affected by a personnel action to the extent permitted by law and regulations will be set at the step of the

grade that most nearly matches the current pay without reducing it. Exceptions to this general policy may be made for the following reasons:

a. Lack of funds; when lack of funds is used as an exception, the exception must be applied uniformly. Centers should keep in mind that this exception by itself does not provide the authority to reduce an employee's pay. In most cases, an employee would have to agree to a reduction in pay or might be entitled to RIF or adverse action procedures.
b. Instances where the maximum rate of the employee's current grade was below the HPR, and the HPR can be applied again when the employee moves into another grade. Example 3a illustrates this situation.
c. Change to a lower grade at an employee's request: In this situation, the Center and the employee will agree on the rate. Centers should require employees to sign a statement agreeing to the grade, step, and actual dollar rate. Although there is discretion when setting the salary on a change to a lower grade, the employee must receive at least a two step increase when he/she is repromoted. Thus, if an employee receives the maximum payable rate on a change to a lower grade and soon after is repromoted, the employee could receive an unintended windfall, (see Chapter 4 on promotions).
d. Change to lower grade for cause; Pay may be set below the employee's current rate.
e. Employees being promoted after having been demoted through no fault of their own; this is similar to exception 2 because the HPR can be applied each time there is a subsequent personnel action, (see example 3a and Chapter 4).
f. Upon an employee's return to his/her permanent position from a temporary promotion: This permits the employee's pay to be set below the pay he/she was receiving on the temporary promotion. Example 3e illustrates this situation. NOTE: Salary earned on a temporary promotion of less than 1 year may be used as HPR only when the employee is permanently placed in a position at the same or higher grade. The employee should sign a statement prior to the temporary promotion, outlining the salary implications. Pay should be set at the rate it would have been if not for the temporary promotion (including any WIG's which the employee would have received).

Centers should document the basis for exceptions.

In NASA when an employee's pay would fall between two steps, he/she will be given the higher step.

3-4. Definition of Highest Previous Rate

In essence, the HPR is an exception to the general rule concerning pay setting. The general rule is that an employee's pay is set at his or her current step or at the first

step of the grade if we are talking about a new appointmen, (see Chapter 2 for a discussion of the general rule for new appointees and exceptions such as appointments above the minimum). With only a few exceptions explained in section 3-6, the HPR permits the setting of pay at a higher step based on salaries previously earned in any pay system (including but not limited to FWS, SES, SL, and ST) and in any branch of the
Federal government.

Note: The HPR may be based only on service in civilian positions. It may not be based on uniformed service including the military services, the Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

3-5. Use of HPR

The law and regulations give agencies wide latitude in using the HPR.

There are some requirements that must be met in order for HPR to be used.

HPR may be used when an employee is transferred, reassigned, promoted, demoted, or reemployed. Keep in mind that even if it was not used for one action, it may be used for a subsequent action.

Example 3a:

Paul is a GS-9 step 10, $42,091, and he accepts a GS-5 position. The Center exercises its discretion not to use HPR and sets his salary at GS-5 step 1, $21,370. 6 months later, Paul is reassigned to a GS-5 position in another activity, and that activity exercises its discretion to set Paul's salary at step 3 of GS-5, $22,794, which is between Paul's current step 1 salary and the HPR. Finally Paul is promoted to GS-8, and that activity decides to use the HPR and MPR rules and set his salary at step 10 of GS-8, $38,108.

3-5-1. For a rate to be used as HPR, it must have been earned on a regular tour of duty meaning full-time or part-time. Rates earned while an employee has been intermittent or when actually employed may not be used as HPR.

3-5-2. The HPR must have been earned under an appointment not limited to 90 days or less, in other words, an appointment of 91 days or more. Note: The employee doesn't actually have to work 91 days.

Example 3b:

Cindy is given a six-month appointment on January 1, but she resigns on February 15. The rate she earned may be used as her HPR because even though she worked less than 91 days, her appointment was for 6 months.

3-5-3. The requirement may also be met by a series of appointments that total at least 90 continuous days.

Note: There is a nuance that is often overlooked. If we are talking about one appointment, it must be at least 91 days for HPR to be used; but if we are talking about a series of short appointments, they only have to total 90 days.

Example 3c:

Wade is given one appointment not to exceed 90 days. The rate earned under that appointment may not be used as the HPR.

Laura is given three consecutive 30-day appointments that total 90 days. Her rate may be used as the HPR.

Caution: Sometimes agencies will bring someone on for 30 days and then want to convert him or her to a permanent appointment, perhaps at a lower grade. The rate on the 30-day appointment may not be used as the HPR, and because they are on the rolls, you can't give them a superior qualifications appointment (see Chapter 2).

3-5-4. HPR may not be based on a rate earned as an expert or consultant appointed under 5 USC 3109.

Note: Many agencies have separate statutory authorities, which permit them to appoint experts and consultants under provisions other than 5 USC 3109. Rates earned on appointments made under these authorities may be used as the HPR. If you have questions, you should check with the Agency where the appointment was made.

3-5-5. HPR may not be based on a temporary promotion of less than 1 year. However, if subsequently the employee is permanently placed in the same or higher grade than the temporary promotion, the rate earned while on the temporary promotion may be used as the HPR.

Example 3d:

Paul is given a 6-month temporary promotion to GS-9, and applying the two-step promotion rule, his salary is set at GS-9 step 3. When Paul's temporary promotion is over and he returns to his former grade, GS-9 step 3 may not be used as his HPR.

Paul resigns and is later reinstated to a permanent GS-9 position. The agency would have the discretion to use GS-9 step 3 as the HPR because he is now being placed in a GS-9 position permanently.

Note: HPR may be used for rates earned on temporary promotions of 1 year or more.

Reminder: If HPR is not used after an employee returns from a temporary promotion, the employee's salary is set as if he or she had not been on the temporary promotion.

Example 3e:

Betty has been at GS-9 step 1 for 8 months when she is temporarily promoted to GS-11 for 6 months. When her temporary promotion is completed and she returns to GS-9, she will be placed in step 2. This is because if she had not been temporarily promoted, she would have been eligible for a step increase 4 months following the date of her temporary promotion (52 weeks in step 1). In addition, the 2 months beyond the 4 months which she needed for the increase to step 2 counts toward completion of her next waiting period, so she will be eligible for an increase to step 3 10 months after she returns from the temporary promotion.

Note: Chapter 12 contains information concerning the affect of promotions on waiting periods for within grade increases. Chapter 4 contains information on WIG's and last equivalent increases.

3-5-6. The HPR may not be based on a rate earned in a position from which the employee was removed or reduced in grade for failure to complete a probationary period as a manager or supervisor.

Note: Strangely there is no similar provision concerning employees who were removed before completing the initial probationary period. Also, there is no similar provision for employees who are demoted under chapter 43 or chapter 75 for performance or conduct reasons (see section 3-3).

3-5-7. HPR may not be based on a void or improper appointment. If an Agency classifies a position to a higher grade following an OPM classification determination that the position should be at a lower grade and OPM then requires that the position be reduced to the lower grade again, the rate earned at the higher grade may not be used as the HPR.

Example 3f:

Alison is promoted to GS-11 and serves at that grade for 6 months. It is later discovered that she did not meet qualification requirements, so she was demoted back to GS-9. Because the promotion was improper, the rate earned at GS-11 may not be used as her HPR.

3-5-8. A salary earned in the District of Columbia Government may not be used as the HPR for someone who was first employed by the DC Government on or after October 1, 1987. This is because on October 1, 1987, DC established its own personnel system, which has the same status of any other city government. However, if someone was employed by DC before October 1, 1987, any rate earned may be used as HPR even if the actual rate was earned on or after October 1, 1987.

Note: Persons first employed with the District of Columbia Government on or after October 1, 1987, who come to the Federal government, are eligible for superior qualifications appointments if requirements are met, and the DC salary may be considered as current earnings. Conversely, persons first employed with the DC Government before October 1, 1987, are not eligible for superior qualifications appointments if they don't have a break in service of at least 90 days. In other words, an earned rate may be used for HPR or superior qualifications purposes, but not both (see Chapter 2).

3-5-9. Rates earned under interim relief appointments may not be used as HPR. Interim relief appointments are those appointments given to an employee who wins an initial decision from the Merit Systems Protection Board (MSPB) while the Agency petitions for review. If the Agency's petition is denied, the interim relief appointment is converted to a regular appointment and of course, HPR can be used.

3-5-10. Most agencies including NASA may not use rates earned in non-appropriated fund instrumentalities (NAFI's) as the HPR. However, the Defense Department (DOD) and the Coast Guard may use rates earned in their NAFI's if the employee moves into a GS position without a break in service of more than 3 days. Interestingly, DOD can't use HPR for employees coming from the Coast Guard, and the Coast Guard can't use it for employees coming from DOD NAFI's. NOTE: If DOD set pay based on a NAFI salary, NASA may use that salary in future pay-setting actions.

3-5-11. Rates earned in other branches of the Federal government and the Postal Service may be used as the HPR. There is a special requirement for persons who work for the Senate or the House of Representatives. If an employee is paid by the Secretary of the Senate or the Chief Administrative Officer of the House (formerly the Clerk of the House) she must have 2 years of employment for the rate to be used as HPR. The employment does not have to be current and does not have to be consecutive. In addition, the rate does not have to have been earned for 2 years. In fact, some times Congressional employees may be given large increases for brief periods of time if, for example, they are losing their position because a Member of Congress has lost an election. In such a case, that higher rate earned for a short time could be used as the HPR as long as total employment was at least 2 years. Of course, a Center is not necessarily required to use that salary as the HPR in such a situation (see the exceptions to the general policy for using HPR in section 3-3).

A Member of Congress may have his or her salary used as the HPR provided that he or she served for at least 2 years.

There are a variety of regional commissions such as the Appalachian and Great Lakes Regional Commissions. These are not really Federal entities, and normally salaries earned on the commissions may not be used as the HPR. However, if a Federal employee goes to work for a commission and returns to the Federal government within 6 months of leaving the commission, the salary earned at the commission may be used as the HPR (see 5 USC 5334).

3-6. Movements Involving Special Rates

NOTE: In this section and throughout the rest of this guide, examples make extensive use of engineering special rates. These are from the year 2000 and are from tables 414 and 422, which authorize worldwide special rates for engineering positions (except GS-854 computer engineers, now paid under special rates for information technology positions, tables 99A-F).

The general rule is that the actual dollar amounts for special rates established under 5 USC 5305 and 5 CFR 530 for the General Schedule and 532.251 for the FWS ***may not be used*** as the HPR.

Under the general rule, only ***the relative position*** of the special rate in the grade may be used as the HPR, not the actual dollar amount.

3-6-1. Reassignments

Special Rate to Non-Special Rate-Greater Contribution

If an employee is reassigned from a special rate position to one that does not have a special rate, the salary is set at the same relative step on the grade even though this results in a lower dollar amount.

Example 3g:

Joe is at step 2 on a special rate of a GS-12 electronics engineer position, $53,215 (table 422). He voluntarily moves to a GS-12 position that does not have a special rate. His salary will be set at step 2 of the basic GS-12 pay scale, $48,520. That salary will be increased by the applicable locality pay percentage for his area, so for example, if he is working at KSC, his actual salary will be $51,810.

The actual dollar amount of a special rate may be used as the HPR for reassignments within the same Agency when the Agency makes a written determination that the employee would make a greater contribution in the new position. Keep in mind that this only applies within a department or Agency such as NASA. It does not apply to transfers between agencies. The term reassignment means movement between positions at the same grade within NASA (including between Centers).

Example 3h:

Ellen is on a GS-12 special rate aerospace engineer position. She is a step 1, which gives her a salary of $48,520. She is accepting a GS-12 position without a special rate, and management has determined that it is more important to have her in the regular rate position than the special rate position. Step 2 of GS-12 is $48,520. Therefore, the MPR is GS-12 step 2. Keep in mind that if the Center uses the MPR, Ellen will get additional money because she will be entitled to locality pay, too. NOTE: It is possible to match Ellen's salary dollars without using MPR, because of the added impact of locality pay.

If the actual dollar amount of the special rate is not used as the HPR at the time the employee is moving out of the position, it may not be used for a subsequent action.

Example 3i:

If Joe from example 3g is later moved to another GS-12 position, the agency may not go back and use the $53,215 as his HPR because there has been an intervening action.

Regular Rate to Special Rate

Under the general rule, if an employee is reassigned from a regular rate to a special rate, he or she is placed in the same relative step on the grade.

Example 3j:

If our old friend Joe from Example 3g was moved from the regular rate of GS-12 step 2 to a GS-12 electronics engineer position, his salary would be set at step 2 on the GS-12 special rate scale, $53,215.

Special Rate to Different Special Rate

If an employee is reassigned from one special rate position to a position with a different special rate, under the general rule his/her salary will be set at the same step in the new grade. However, if the Agency determines that it is more important to have the employee in the new position, the actual dollar amount may be used.

Example 3k:

Roberta is a multi-talented employee, and she is reassigned from a GS-12 step 2 electronics engineer position (table 422) with a special rate of $53,215 to a GS-12 aerospace engineer position. On this special rate table (table 414), step 2 is $50,085. If the reassignment was at her request and the Center does not feel that it is more important to have her in the engineering position, her salary will be set at GS-12 step 2, $50,085. However, if the agency makes a written determination that it is more important to have her in the aerospace engineering position, $53,215 can be used as the HPR. On the aerospace engineering pay table, $53,215 is equal to step 4, so her salary would be set at step 4. Following these computations, the agency must then determine whether she will be paid the special rate or the regular rate as augmented by locality pay, whichever is greater (see Chapter 5).

3-6-2. Changes to Lower Grade

The following discussion generally concerns voluntary changes to lower grade. A more in-depth discussion of involuntary changes to lower grade found in Chapter 7, Grade and Pay Retention.

The general rule is to use the relative step in the salary range to set pay, not the dollar value.

Special Rate to Regular Rate

If an employee changes from a special rate position to a lower grade regular rate position, use the comparable *step* (not the salary) from the higher-grade basic General Schedule pay scale to calculate the HPR and then determine the appropriate step in the lower grade.

Example 3l

If Joe had accepted a voluntary change from a GS-12 step 2 aerospace engineer position to a regular rate position at GS-11, his HPR would be figured by using GS-12 step 2 on the basic GS scale, $48,520. $48,520 falls between GS-11 step 8, $48,320 and step 9 $49,626, so his MPR is GS-11 step 9, $49,626.

NOTE: The rule is different if the change to lower grade is involuntary, not for cause (e.g., RIF or classification). Is this case, use the *salary amount,* instead of the step, to set pay. See Chapter 7 for setting pay in involuntary actions, when the MPR exceeds the payable salary at the lower grade.

Example 3m:

If Joe from Example 3l had been reclassified (an involuntary change to lower grade, not for cause) from a GS-12 step aerospace engineer position to a regular rate position at GS-11, his HPR would be figured by using his current salary on the special rate scale ($50,085 on table 414). $50,085 falls between GS-11 step 9 ($49,626) and step 10 ($50,932). His MPR would be GS-11 step 10, one step higher than in the above example. (Note that Joe could be eligible for grade retention, in which case, his pay would be set differently. See Chapter 7.)

Regular Rate to Special Rate

If an employee is moved from a regular rate position to a lower grade special rate position, first figure the salary on the regular rate scale and set the salary at the comparable step on the special rate scale.

Example 3n:

If Joe were voluntarily moving from the regular rate position, GS-13 step 2, $57,698, to a GS-12 electronics engineer position (assuming that the Agency is going to use the MPR:

1. First figure his salary on the regular GS-12 scale.
2. $57,698 falls between GS-12 step 7, $56,345 and step 8, $57,910. Therefore, he could be paid at step 8 of GS-12.
3. His salary then would be set at GS-12 step 8 of the aerospace engineer special rate scale, which is $62,605.
4. As explained in Chapter 5, the Agency would pay him either this salary or the applicable locality pay for GS-12 step 8, whichever is higher. For example, this salary is higher than the locality rate for GS-12 step 8 at KSC ($61,836) but is lower than the locality rate at GSFC ($63,151).

If an employee is changed to a lower grade on the same special rate table, calculate the MPR as you would for someone changing grades in the regular rate range but using the rates in the special rate table.

Example 3o:

Orlando is a GS-12 step 2 aerospace engineer ($50,085) changing to a GS-11 aerospace engineer position. On the aerospace engineer special rate table $50,085 falls between GS-11 step 5 $49,626 and step 6, $50,932, so his salary will be set at step 6, $50,932 and then compared with the applicable locality rate as explained in chapter 5 to determine what he will actually be paid.

Different Special Rate Schedule

If an employee is changed to a lower grade and moves from one special rate table to another and both tables have special rate ranges for the higher grade, find the comparable step at the higher grade on the new table and then match the step in the lower grade.

Example 3p:

Ellen is moving from a GS-12 step 4 electronics engineer position (table 422: $56,345) to a GS-11 aerospace engineer position (table 414).

1. Find Ellen's current salary on table 422 (GS-12 step 4 on this scale is $53,215).
2. Find this *dollar amount* on table 414 ($53,215 falls between GS-11 step 7 ($52,238) and step 8 ($53,544)).
3. Set pay at step on table 414 that matches dollar amount on table 422 (GS-11 step 8, $53,544).

If she were working in San Francisco, she would be paid the regular rate augmented by locality pay, which is $55,573, because the locality rate is higher than the special rate. However, if she were working in Huntsville, she would be paid the special rate of $53,544 because the locality rate for GS-11 step 8 ($51,809) is lower than the special rate.

Special Rate to Different Special Rate-No Rate at Current Grade

If an employee is changed to a lower grade from one special rate table to another but the new special rate table is not applicable to the higher grade, find the comparable step in the higher grade on the regular range, then match it in the lower grade, and place the employee in the same step of the special rate range.

Example 3q:

George is moving from a GS-13 step 2 medical officer position, $72,586 to a GS-12 aerospace engineer position. On the engineering table, there are no special rates for GS-13. GS-13 step 2 in the regular rate range is $57,698. In the regular rate range, $57,698 falls between GS-12 step 7 ($56,345) and step 8 ($57,910). Therefore, his salary is set at GS-12 step 8. GS-12 step 8 on the engineering special rate table equals $59,475. It turns out that this is lower than the locality rates for GS- 12 step 8 in all the locality pay areas; regardless of where George is located, he will be paid the regular rate plus locality pay.

Employees who are changed to a lower grade may be eligible for retained grade or pay (see Chapter 7).

3-7. Using the HPR and MPR to Compute Salaries

3-7-1. Definition of Maximum Payable Rate

The MPR is the highest rate at which an employee's pay can be set when the MPR is used. It may not exceed the top step of the employee's current grade. If the HPR comes out between two steps, the employee may be paid at the higher step, and as explained in section 3-3, it is NASA's policy to pay the higher step.

3-7-2. Computing the MPR

Except as discussed in 3-7-3 below, the following steps are used to calculate the MPR:

a. Get the pay schedule in effect when the employee earned the HPR.
b. On that pay schedule, find the rates for the grade to which the employee is moving.
c. Find the lowest step that equals or exceeds the HPR or the top step of the grade if the top step is below the HPR.
d. Remember, as explained above, if the HPR falls between two steps on the grade the employee is moving into, the higher step will be used as the MPR.
e. Then find the corresponding grade and step on the current pay chart, and that's the employee's salary.

Sometimes, people ask whether it wouldn't be quicker to simply do the comparison on the current pay scale. For example, if an employee was GS-6 step 5 in 1990 and is being reinstated as a GS-5, just look at the current pay scales and figure out where the GS-6 step 5 rate falls on the GS-5 scale. In most cases, this would work but not in all cases. In the 1970s, for example, not all grades received the same percentage increases. Therefore, if you didn't first look at the scales in effect at that time, you would miscalculate the HPR. In addition, if you are using a non-GS pay scale and are comparing it with the GS pay scale, you must use the scales in effect at the time the employee earned the rate.

Example 3r:

Emmett was a GS-6 step 1 in 1981 ($14,328). He is being reinstated to a GS-4 position. You find that in 1981, GS-4 step 8 was $14,171, and step 9 was $14,554. Therefore, his MPR is GS-4 step 9. Using 2000 rates, his MPR will be $24,196. He can be paid that rate, and he would receive the applicable locality pay percentage (see Chapter 5). Since the use of MPR is optional, a Center could decide to set his salary at a lower step *if one of the exceptions to NASA's policy explained in section 3-3 was applicable.*

Example 3s:

Elaine was a WG employee in 1994 at a rate of $14.01 per hour. Her equivalent GS rate is obtained by multiplying $14.01 times 2087, which equals $29,238.87. She is being reinstated to a GS-6 position. In 1994, the tenth step of GS-6 was $26,572. Therefore, her MPR is GS-6 step 10, which equals $30,966 in 2000, and of course, she will get locality pay too.

Example 3t:

Ray is working for the Post Office. In 2000, he is making $54,000 per year. He is being hired into a GS-12 position. Step 5 of GS-12 is $53,215, and step 6 is $54,780. Therefore, the MPR is GS-12 step 6.

3-7-3. Computing HPR Based on Merit Pay (GM) Rates.

If an employee was on merit pay, figure out the HPR and MPR as follows.

a. Find the pay scale he or she was on and the grade on that scale he or she is going into.
b. Find the difference between the bottom and top of the grade.
c. Subtract the rate for the bottom of the grade from the employee's salary.
d. Divide c by b to the 7th decimal place truncating, not rounding the last number.
e. On the current pay scale, find the difference between the bottom and the top of the grade that the employee is moving into.
f. Multiply d times e, and round the result to the next whole dollar.
g. Add f to the lowest rate of the grade, and that's the MPR.

Example 3u:

Andy was in a GM-14 merit pay position in 1989. His salary was $52,592. He resigned and is being reinstated to a GS-13 position in 2000.

- The difference between the bottom and top of GS-13 in 1989 is $53,460 minus $41,121 equals $12,339.
- $52,592 minus $41,121 equals $11,471.
- $11,471 divided by $12,339 equals .9296539.
- In 2000, the rate range for GS-13 is $55,837 to $72,586.
- $72,586 minus $55,837 equals $16,749.
- .9296539 times $16,749 equals $15,770.77, rounding to the next dollar equals $15,771.
- The first step of GS-13 in 2000 is $55,837.
- $55,837 plus $15,771 equals $71,408.
- $71,408 falls between GS-13, step 9 ($70,725) and step 10 ($72,586), so the MPR is GS-13, step 10.

Chapter 4

PROMOTIONS

Note: Unless otherwise stated, the rates used in this chapter are for the year 2000.

4-1. Introduction

This chapter covers promotions in the General Schedule. Promotions for the FWS are covered in Chapter 17.

4-2. Authority

a. Law, rate on change of position or type of appointment: 5 USC 5334
b. OPM regulations for determining pay for special rate employees: 5 CFR 530.306
c. OPM regulations concerning promotions and transfers: 5 CFR 531.204

4-3. Definition of Promotion

For pay purposes the definition of promotion in the General Schedule is a change from one GS grade to a higher GS grade while continuously employed. Even though an action may not be a promotion under the staffing or personnel processing rules, it still may be a promotion for pay purposes. The following are examples:

a. An employee on a temporary appointment receives another temporary appointment at a higher grade without a break in service.
b. An employee on a temporary appointment receives a permanent appointment at a higher grade without a break in service.
c. An employee transfers to another Agency at a higher grade.
d. An employee on a permanent appointment receives a new career-conditional appointment at a higher grade from a competitive examination.

All of these will be processed as something other than promotions (for example) conversions and transfers, but they are all promotions for pay purposes requiring the application of the promotion rules described in this chapter.

4-4. The Two-Step Rule

When an employee is promoted *from one GS position to another*, * he or she must receive an increase equal to at least two steps of the grade from which he or she is

being promoted. If the resulting computation falls between two steps in the higher grade, the employee must receive the higher step. Except for a situation involving special rate employees, which is explained in section 4-5, an employee may not be placed above the top step of the grade to which he or she is being promoted.

*NOTE: The 2-step rule applies only when the employee is promoted from one GS position to another, or from a lower rate under a non-Title 5 system to a GS position. In all other cases, placement into a GS position will follow the rules for initial appointment, i.e., placement at step one or use of the highest previous rate rules.

If an employee is at step 10 of the grade, add the two steps to that tenth step and then calculate where the rate falls in the new grade. For grades 1 and 2, use the difference between steps 9 and 10 when figuring out how much to add to step 10. This is important for these grades because the steps for these grades are not uniform as they are for the other grades.

Example 4a (regular rate to regular rate):

Stephanie is at GS-5 step 10 ($27,778) and is being promoted to GS-6. Each step in GS-5 is $712.
When she is promoted, she must receive at least $27,778 plus $1,424 ($712 times 2), or $29,202.
$29,202 is between GS-6 step 7, $28,584 and GS-6 step 8, $29,378, so Stephanie's salary is set at GS-6 step 8, $29,378.

If an employee is due a within grade increase on the same date as a promotion, the step resulting from the within grade increase is used when applying the two-step rule. (See Chapter 1-7)

Example 4b (promotion with concurrent WIG):

Charles is at GS-4 step 5, and he is due an increase to step 6 on July 16. His agency also intends to promote him to GS-5 on that date. Including the increase to step 6 and then applying the two-step rule, his salary in GS-5 must be at least two steps more than GS-4 step 6. GS-4 step 8 equals $23,559. $23,559 falls between GS-5, step 5 ($24,218) and step 6 ($24,930), so his salary will be set at GS-5 step 6.

4-5. Promotions Between Special and Regular Rates

4-5-1. If an employee is promoted from a special rate position to a regular rate position, add the two steps in the lower grade on the special rate scale, then find where the new salary falls on the regular rate scale of the higher grade.

Example 4c (special rate to regular rate):

Jeff occupies a GS-7 special rate engineering position. He is at step 4. He's being promoted to a GS-9 regular rate position.
The GS-7 step 4 special rate equals $37,054. Applying the two-step rule, he is entitled to a salary equal to at least step 6 of GS-7 on the special rate scale, $38,818. Use this *salary (*not step) to set his pay.
On the GS-9 regular pay scale, $38,818 falls between step 6 ($37,775) and step 7 ($38,854), so Jeff's salary is set at step 7 ($38,854).

4-5-2. If an employee is being promoted from a regular rate position to a special rate position, apply the two-step rule and figure out what step in the higher grade the employee would be entitled to on the regular rate scale and then set the pay at the same relative step in the special rate scale.

Example 4d (regular rate to special rate):

Debby is being promoted from the regular rate GS-5 step 4 ($23,506) to a GS-6 special rate position. Each step in GS-5 is $712.
Applying the two-step rule, she is entitled to $24,930 (GS-5 step 6). $24,930 falls between GS-6 step 2 ($24,614) and GS-6 step 3 ($25,408) on the regular rate scale. Therefore, Debby is entitled to GS-6 step 3. Since she is moving to a special rate schedule, she is entitled to step 3 on the special rate scale, which equals $27,790.

Note: For purposes of this example, we used a special rate scale which was three steps higher than the regular rate scale.

4-5-3. Sometimes an employee's existing special rate will be higher than the top step of the regular scale on the grade to which he or she is being promoted. In this situation, the employee continues to earn the higher salary even after he or she is promoted. This is not a retained rate under 5 CFR 536, so the employee receives 100%, not 50% of future pay raises for the top step of his or her grade.

Example 4e (special rate to regular rate; exceeds top step):

Mariano is on the GS-5 engineer special rate scale at step 10, which equals $34,186.
He is being promoted to a GS-6 regular rate position. The top step of GS-6 is $30,966.

4-5-4. If an employee is being promoted from a position on a special rate scale to a position on the same special rate scale, apply the two-step rule using that scale.

Example 4f (special rate to special rate, same schedule):

Nancy is being promoted from a GS-12 medical officer position to a GS-13 medical officer position. Her current salary is GS-12 step 8 ($70,430). Applying the two-step rule, she is entitled to a salary that is equal to at least GS-12 step 10 ($73,560). On the GS-13 medical officer special rate scale, $73,560 falls between step 3 ($74,447) and step 4 ($76,308), so her salary will be set at GS-13 step 4 ($76,308).

4-5-5. If an employee is being promoted from a position on a special rate scale to a position on a different special rate, add the two steps on his/her current special rate scale, and figure out where it will fall on the higher grade on the new scale.

Example 4g (special rate to special rate, different schedule):

Clay is being promoted from a GS-11 step 1 medical officer position, $49,626 to a GS-12 engineering position. Applying the two-step rule, he must receive a salary equal to at least GS-11 step 3 on the medical officer rate range, $52,238. On the GS-12 engineering rate range, $52,238 falls between step 3 ($51,650) and step 4 ($53,215), so his salary will be set at GS-12 step 4 on the engineering special rate range ($53,215).

4-6. Relationship Between the MPR and the Promotion Rule (Two-Step Rule)

When an employee is promoted, he or she must receive the two-step minimum. If the MPR is higher than what results from applying the two-step rule, the salary may

be set either using the promotion rule or the MPR. As explained in Chapter 3, NASA's policy is to use the MPR.

Example 4h:

Betty is a GS-13 step 2 ($57,698), and she accepts a GS-11 step 1 position ($39,178). When she is promoted to GS-12, applying the two-step rule, she is entitled to GS-12 step 1 ($46,955). However, applying the MPR, $57,698 falls between GS-12 step 7 ($56,345) and step 8 ($57,910). Therefore, her salary could be set anywhere between steps 1 and 8 of GS-12, and most of the time in NASA it would be set at step 8. (See Chapter 3 for NASA policy.)

4-7. Promotion of Employees on Retained Pay

When an employee who is receiving retained pay is promoted, the employee receives the higher of:

a. Two steps above step 10 of the employee's current grade.
b. Retained pay.

As usual, the Agency has discretion to use the MPR if it's higher than a or b.

Example 4i (promotion with retained pay):

Mike is a GS-7 employee at step 10 with retained pay of $44,000. At one time he had been a GS-12 step 1 employee (2000 rate, $46,955). He's being promoted to GS-9.

- GS-7 step 10 equals $34,408. Each step is $882.
- Applying the two-step rule, he is entitled to $36,172.
- Since his retained pay is $44,000, he is entitled to continue receiving that.
- Since his retained rate exceeds his MPR, the Agency has no discretion to apply the MPR.
- On the other hand, if he were being promoted to GS-11, the MPR (based on GS-12 step 1 ($46,955)) would fall between steps 6 ($45,708) and 7 ($47,014. Tthe Agency would have the discretion of either paying him his retained pay or the MPR.

4-8. Windfalls

As explained in Chapter 3, when an employee is changed to a lower grade and then repromoted, there is the possibility of an unintended windfall. Agencies have discretion at the time of the change to the lower grade with respect to applying HPR and MPR rules. Once the salary is set, the two-step rule must be applied when the employee is repromoted. Centers should be aware of this possibility at the time the change to the lower grade takes place.

Example 4j:

Jane is at GS-6 step 1 ($23,820), and she requests a change to a GS-5 position because it has more promotion potential. If the agency uses the MPR, her salary will be set at GS-5 step 5 ($24,218). A few months later, when she is promoted back to GS-6, applying the two-step rule, her salary must be set at GS-6 step 4 ($26,202), which is a significant increase in a short period of time. Of course, the organization may feel that she is bringing sufficient value to the position that the increase is justified.

If when she accepted the GS-5 position, the agency set her salary at GS-5 step 3 ($22,794), her salary would be set at GS-6 step 2 ($24,614) when she was repromoted. Thus, she would receive only a slight increase instead of a windfall.

NOTE: Current NASA policy does not define this scenario as an exception to HPR. Contact the Agency Personnel Policy Branch if you have questions.

Whenever an employee voluntarily accepts a change to a lower grade, Centers should require the employee to sign a statement indicating that he/she understands what the new grade, step, and salary are and that he/she agrees to them. This is particularly important if salary is being set below the MPR.

Chapter 5

LOCALITY PAY

5-1. Introduction

This chapter covers the operation of locality pay including:

- The history of locality pay;
- Why rates are not as high as envisioned by the law;
- Locality pay areas;
- Movements between locality areas;
- Who is covered by locality pay;
- Purposes for which locality pay may be used;
- Purposes for which it may not be used; and
- How locality pay figures into other pay computations.

5-2. Authority

a. Law, locality pay: 5 USC 5304
b. Travel Reform Act of 1996: 5 USC 5737
c. OPM regulations concerning locality pay: 5 CFR 531.601 to 607
d. Interim regulations issued to implement The Federal Employees Travel Reform Act of 1996 (5 USC 5737) (these regulations were published on May 9, 1997 at 62 FR 25,423 and amended parts 530, 531, 536, and 591).

5-3. Background

FEPCA included locality pay for the General Schedule. Except for special rates, the General Schedule had been a nationwide pay scale. It was felt that it was necessary to take into account differences in labor costs throughout the country, so the Federal government could better compete with the private sector. It is important to note that locality pay was never intended to be tied to a cost of living index. It is tied to the employment cost index, which is concerned with labor costs.

The law provided that over 9 years, the difference between Federal and private sector employment costs should be reduced to 5%. During the first year the difference between the existing gap and the 5% goal was to be reduced by 20%, and the difference was to be reduced by 10% for each of the following 8 years.

Because of the budget deficit and concerns from both the President and some members of Congress about the reality of the gap between Federal and private sector costs, locality pay increases that began in January 1994, have not even come close to reducing the gap between employment costs. In fact, some statistics show that the gap has widened. It's unlikely that we will see the large increases originally envisioned in the law.

5-4. Coverage

Locality pay applies to all GS (including GM) employees in the 48 continental United States and Washington, DC. It does not apply to Alaska, Hawaii, and other non-foreign areas such as Puerto Rico. Employees in these areas receive non-foreign area cost of living allowances.

The law permits the President to extend locality pay to other groups of employees. In 1994, it was not extended to other groups, but in every year after that, it has been extended to the SES, SL/ST positions, Administrative Law Judges, Boards of Contract Appeals, and the Foreign Service. Agencies with groups of employees unique to them may also request that locality pay be extended to those employees. NASA has not requested that locality pay be extended to NASA Excepted positions because NASA has sufficient flexibility to set pay rates for these employees to take into account any geographic differences by adjusting an employee's basic pay. Locality pay may not be granted to prevailing rate employees because their rates already take into account local labor conditions (see Chapter 17).

The determination for coverage of non-GS employees is made each year. If covered, these employees receive the entire locality pay amount, not just the increase for the next year.

Example 5a:

Mickey is a senior level (SL) employee with a base salary of $100,000 in Atlanta. In 1999, the locality percentage for Atlanta was 6.67, so his salary was $106,670. If the President had not extended locality pay to Senior Level positions in 2000, he would lose all locality pay, not just the increase to 7.66%, and his salary would drop to $100,000. Of course, since he occupies a senior level position, the Agency would have the discretion to adjust his salary within the senior level scale.

Since locality pay was in fact extended to senior level positions in 2000, his salary would be $100,000 plus the 7.66% locality pay ($107,660). NASA would still have the discretion to increase his salary on the senior level scale even further (no more than once in a 12-month period), and he will receive the 7.66% locality pay on whatever senior level salary the Agency sets.

5-5. Locality Pay Caps

GS pay as augmented by locality pay percentages may not exceed Level IV of the executive pay schedule. In 2000, this equals $122,400. In 2000, the top step of GS-15 is $100,897, and the highest locality pay percentage is 15.01 in San Francisco. Therefore, the highest locality GS salary would be $116,042 ($100,897 times 1.1501), which is below the cap.

Locality pay may not cause the salaries of employees in other groups to which it has been extended to exceed Level III of the Executive Schedule. In 2000, Level III equals $130,200. There will be employees whose salaries will be reduced because of this cap.

Example 5b:

Jenny is an SL employee in San Francisco earning $115,000 plus locality pay. $115,000 augmented by 15.01% locality pay ($132,262). Since this exceeds level III of the Executive Schedule, her salary must be reduced to that level, $130,200 (the salary in 2000).

5-6. Locality Pay Areas

The United States is divided into locality pay areas. These areas correspond to metropolitan statistical areas. A locality pay area may contain more than one

metropolitan area. 5 CFR 531.602 lists the locality pay areas, and each year based on a review, locality pay areas may be removed or added. In addition to the metropolitan areas, there is an area called the Rest of the United States (RUS). In 2000, there are 32 locality areas including RUS. See OPM's website at **http://www.opm.gov/oca/2000tbls/GSannual/html/locdef.htm** for the year 2000 definitions of the locality pay areas. In 2000, the locality percentages ranged from 6.78% in the RUS pay area to 15.01% for the San Francisco pay area.

5-7. Movements Between Locality Pay Areas

An employee's locality pay is based on the pay area where his or her official duty station is located. It doesn't matter where the employee lives.

If an employee's duty station is changed, the employee is paid the locality pay for the new duty station even if this means less money and even if the action was involuntary.

Example 5c:

Max is a GS-15 step 1 employee at HQ in Washington, DC earning $84,638. His agency directs his reassignment to KSC. His new salary will be $82,876 because KSC ((RUS area) has a lower locality pay percentage than Washington, DC It doesn't matter that Max was directed to take this reassignment. Even though there has been a reduction in Max's salary, this is not an adverse action, and Max must accept the salary reduction.

If an employee is temporarily promoted or reassigned to a different locality pay area, the locality pay percentage for that new area applies. When the employee returns to the original area, the locality pay percentage is once again the percentage for that area. Note: We are talking about an action specifically labeled as a temporary reassignment or a promotion, not a detail. Some agencies do not use temporary reassignments. See Example 5e below (detail action).

Example 5d:

Patsy is a GS-11 step 2 employee in Atlanta earning $43,585. She is given a temporary reassignment (not a detail) to New York, so during that temporary reassignment her salary will be $45,379, and when she returns to Atlanta, her salary will return to $43,585.

In most cases, when an employee is detailed, this will have no affect on his or her locality pay even if the detail is to another location. This is because the employee's position of record does not change. However, there is one exception. The Federal Employees Travel Reform Act of 1996 (5 USC 5737) permits agencies to pay relocation expenses for employees on extended temporary assignments from 6 to 30 months. This is in lieu of paying subsistence expenses for lodging and meals. If the Agency pays the relocation expenses, the employee's duty station is considered to have changed for locality pay purposes.

Example 5e:

Ralph is detailed from Houston to NASA Headquarters in Washington, DC for 9 months. NASA pays Ralph's relocation expenses. Therefore, even though Ralph is on detail, his locality pay percentage for the 9 months will be 9.05% instead of the 14.79% for Houston. When he returns to Houston, his locality pay percentage will return to 14.79. If NASA had not paid his relocation expenses and had paid his per diem expenses, his locality pay percentage would have remained 14.79 for the 9 months he was in Washington, DC. Centers should process such an action as a temporary reassignment, to highlight the pay implications.

5-8. Uses of Locality Pay

Locality pay is basic pay for retirement (including the thrift savings plan), life insurance, premium pay, the Fair Labor Standards Act, pay advances for new employees, workers compensation, severance pay, and lump sum annual leave payments. It may not be used when determining promotions, WIG's, HPR, pay retention, or the dollar amount of recruitment bonuses, relocation bonuses, and retention allowances.

Exception: NASA was able to obtain a ***variation from OPM to permit the use of locality pay as HPR*** for two employees***.*** The employees were engineering technicians who accepted lower graded positions to enter an upward mobility program. As explained in Chapter 7, NASA was able to give them retained pay because they were entering an upward mobility program. Their retained pay augmented by locality pay was equal to their former salaries including locality pay.

Subsequently they were promoted into a position with a special rate. As explained in Chapter 4, when an employee receiving pay retention is promoted, he/she is entitled to two steps above step 10 of the grade currently occupied not two steps above the retained rate. If application of the two-step

rule produces a rate below the retained rate, which it did in this case, the employee can keep the retained rate. If the rate falls within the range for the new grade, the employee's salary is set at one of the steps of the grade. In this case, the salary was set at step 1 of the special rate schedule for the new grade. The problem arose because special rates are not augmented by locality pay. Thus, the employees in effect had the locality pay percentage taken away and would have suffered a significant pay reduction.

To avoid a clear inequity and consistent with the spirit of the regulations, OPM granted NASA a variation which permitted the use of the employees' original salaries including locality pay as HPR, so their salaries could be set at a higher step in the rate range of the grade to which they were promoted.

This case involves concepts explained in this chapter as well as Chapters 4 and 7. (See Chapter 19 for a discussion of variations.)

If Centers have situations that are similar or just as compelling, contact the Office of Human Resources and Education to determine whether a variation could be requested from OPM. Even if there is another similar case, NASA does not have the authority to use the locality pay as HPR without requesting a new variation. (See Chapter 19 for a discussion of variations.)

5-9. Pay Administration

The general rule is that pay computations should be done on the basic General Schedule and the appropriate locality pay percentage is then added to the result. For actions such as promotions within the same locality pay area, it would be all right to work directly from the locality pay scale, but specialists should be cautioned not to fall into this habit for actions involving more than one locality pay area.

Example 5f:

Brenda is a GS-9 step 8 employee at ARC (San Francisco pay area) earning $45,927. She is being promoted to a GS-11 position in at KSC (RUS). Her salary must first be set on the basic GS schedule. She is entitled to at least a two-step increase under the promotion rules. On the basic General Schedule, GS-9 step 10 equals $42,091, which falls between GS-11 step 3 ($41,790) and step 4 ($43,096). Therefore, her salary is set at GS-11 step 4. On the RUS locality pay scale, GS-11 step 4 equals $46,018, which is her new salary. Note: her new salary is only slightly more than she was earning at ARC, even though she received a promotion. This is because the locality percentage is so much higher at ARC than it is at KSC.

Example 5g:

Rick was a GS-6 step 5 employee in Los Angeles in 1995 when he left the Federal government. He is being reinstated to a GS-4 position in Washington, DC in 2000, and the Agency's policy is to use the HPR and MPR. Using the basic General Schedule for 1995, GS-6 step 5 equals $23,632, which exceeds GS-4 step 10 ($21,734). Therefore, his salary is set at GS-4 step 10, which equals $27,080 on the 2000 Washington, DC locality pay scale. Even though he earned his HPR in Los Angeles, there was no need to refer to the locality pay scale for that city.

5-10. Relation Between Locality Pay and Special Rates

An employee receives the greater of the regular GS rate as augmented by locality pay or any applicable special rate. Chapter 10 concerning law enforcement officer pay discusses one exception to this general rule for certain law enforcement special rates. For those rates, the employee receives locality pay on top of the special rate.

Example 5h:

Mary is a GS-7 step 1 employee on a special rate at LaRC (RUS). GS-7 step 1 on her special rate table is $30,000. Since GS-7 step 1 on the RUS locality pay scale is $28,265, she is paid the special rate salary of $30,000. However, if she had the same special rate in San Francisco, she would be paid the locality pay salary of $30,443 because it exceeds the special rate salary.

When comparing a special rate and locality pay for a GM employee, use the following steps:

1. On the special rate scale, subtract the first step of the grade from the employee's salary.
2. Add the result obtained in 1 to the first step of the basic General Schedule.
3. Multiply the result obtained in 2 by the applicable locality pay percentage.

Example 5i:

Kile is a GM 13 employee on a special rate scale at DFRC (Los Angeles pay area) earning $59,800.

- The first step of the scale is $58,800.
- The difference between the first step of the special rate scale and his salary is $1,000.
- The first step of GS-13 on the basic General Schedule is $55,837.
- $55,837 plus $1,000 equals $56,837.
- The locality pay percentage for Los Angeles in 2000 is 12.76%.
- 56,837 times 1.1276 equals $64,089.
- Since $64,089 exceeds his special rate of $59,800, he is paid the locality pay of $64,089.

NOTE: If an employee is receiving locality pay because locality pay exceeds an underlying special rate, still use the underlying special rate for pay administration purposes such as promotions and within grade increases. After the computations are completed, do the comparison described above to determine whether the employee will receive the special rate or locality pay.

Example 5j:

Dawn is a GS-4 step 4 special rate employee in New York. The special rate is $22,285, and the locality rate is $23,551. She is receiving the locality rate. She is being promoted to GS-5 on the same special rate scale.

She is entitled to a two-step increase. Step 6 on the GS-4 special rate scale equals $23,559, which falls between GS-5 step 2 on the special rate scale ($23,506) and step 3 ($24,218). Therefore, her salary will be set at GS-5 step 3. GS-5 step 3 on the New York locality pay table is $25,550, so she is paid at GS-5 step 3 on the locality pay table.

5-11. Computing the Net Annual Increase

Normally it should not be necessary for you to compute locality pay rates from year to year because OPM publishes new pay scales which are available on its web site, (**http://www.opm.gov**). However, it is useful to understand how the pay scales are calculated. New locality pay scales are computed using the following procedures:

1. Increase the basic General Schedule by the amount of the general increase.
2. Multiply the result obtained in 1 by the new locality pay percentage for the particular area.

Example 5k:

In 1999, GS-5 step 1 in Atlanta was $21,961. GS-5 step 1 on the basic General Schedule was $20,588. To obtain the amount for GS-5 step 1 on the 2000 Atlanta locality pay scale, multiply $20,588 times 1.038 (reflecting the 3.8% general increase), then multiply the result of that computation times 1.0766 (reflecting the 7.66% locality pay percentage for Atlanta in 2000), equals $23,007.

Because locality pay increases vary among locality areas, the net increase which employees receive varies depending on their locality pay area. Although the net increase is not used for any particular purpose, OPM includes it when it publishes locality pay tables. You may wish to include it when explaining to employees how much their pay will increase. The percentage of the net increase can be obtained by following these steps:

1. Subtract the old year's locality salary from the salary in the new year.
2. Divide the result obtained in 1 by the old year's salary.

Example 5l:

Using the rates for Atlanta from the above example:

1. The difference between the 1999 and 2000 salaries for GS-5 step 1 is $23,007 minus $21,961 equals $1,046.
2. $1,046 divided by $21,961 equals 4.76%, the net increase between 1999 and 2000 for the Atlanta locality pay area.

Chapter 6

CONTINUED RATES OF PAY

6-1. Introduction

As locality pay rates have increased each year, the number of employees receiving continued rates of pay has been dropping, but there are still some. Setting their pay can be complicated. This chapter explains continued rates of pay including:

- Why they exist;
- How they are determined;
- Purposes for which continued rates of pay may be used;
- Purposes for which continued rates of pay may not be used;
- Affect of pay of annual pay increases on continued rates;
- Promotions, and within grade increases; and
- Conditions under which continued rates of pay terminate.

6-2. Authority

OPM Regulations concerning continued rates of pay: 5 CFR 531.701 to 705.

6-3. Background

When FEPCA was passed, interim geographic adjustments (IGA's) of 8% were established for New York, Los Angeles, and San Francisco. Under the regulations promulgated to implement those IGA's, employees on worldwide or nationwide special rates received the 8% adjustment on top of those special rates.

In January 1994, when OPM issued regulations to implement locality pay, the regulations provided that employees would not receive locality pay or IGS's on top of any special rates established by OPM under 5 USC 5305.

As explained in Chapter 5, employees receiving special rates are paid either the basic GS rate as augmented by locality pay or the applicable special rate. If these provisions had been implemented in 1994 for those employees who had been receiving an 8% adjustment on top of a special rate, those employees would have had their pay reduced.
To avoid reductions in pay, OPM issued regulations establishing continued rates of pay for those employees.

Example 6a:

Cliff was a GS-13 step 1 employee at ARC (San Francisco locality pay area) receiving a special rate of $50,000 plus the 8% IGA: $54,000. In January 1994, the regular rate for GS-13 step 1 was $47,920. Without the continued rate of pay, Cliff would have been entitled to the greater of:

1. $50,000 (his current rate), or
2. His base rate of $47,920 times 1.08(reflecting the 8% IGA), which equals $51,754.

Thus, without the continued rate of pay, his salary would have been reduced from $54,000 to $51,754. To avoid this reduction, his rate of pay was "continued" at $54,000.

The IGA's are gone in the three locations because locality pay now exceeds them, (12.09% in New York, 12.76% in Los Angeles, and 15.01% in San Francisco in 2000). However, continued rates of pay still exist. Employees receive the greater of their continued rate of pay, the applicable special rate, or the basic GS rate as augmented by locality pay.

Example 6b:

Veronica is a GS-12 step 10 medical officer at ARC. In 1997, the special rate was $61,480, and the locality pay rate was $61,704. Her continued rate of pay was $62,000, and since it was the highest of the three, she is entitled to continue this rate. See example 6c for a continuation of Veronica's case.

6-4. Uses of Continued Rates of Pay

Continued rates of pay are used for the same purposes as locality pay. As explained in Chapter 5, these include retirement including the thrift savings plan, life insurance, premium pay, the Fair Labor Standards Act, pay advances for new employees, workers compensation, severance pay, and lump sum annual leave payments. These rates may not be used when determining promotions, WIG's, HPR, pay retention, or the dollar amount of recruitment bonuses, relocation bonuses, and retention allowances.

6-5. Pay increases

An employee receiving a continued rate of pay receives the smaller of:

a. The general increase for his or her grade and step on the basic General Schedule (the dollar amount received by the step 10), or
b. The dollar-amount increase to the top step on the applicable special rate scale.

This is true even if, for example, the special rate is not increased at all. In that case, the employee's continued rate of pay would not be increased. Note that the underlying rate of pay increases, not the "add-on" portion that comprises the continued rate. Of course, the Agency would have to determine whether the employee should still receive the continued rate of pay or whether he or she should now receive the applicable special rate or the basic GS rate as augmented by locality pay.

Example 6c:

Remember Veronica from example 6b. For purposes of this example, let's assume that the special rate was only increased by 2%.

- 2% of $61,480 equals $1,230.
- GS-12 step 10 on the 1997 basic GS pay scale was $55,760.
- The 2.3% general increase resulted in an increase of $1,282.
- Since $1,230 is less than $1,282, Veronica's continued rate of pay would increase by $1,230 to $63,230.
- This is more than the special rate, which increases to $62,710 ($61,480 plus $1,230).
- However, the locality rate for GS-12 step 10 in San Francisco increased to $63,922, which exceeds Veronica's continued rate of pay, so she will receive the locality rate.
- Veronica's entitlement to continued rate of pay ends.

6-6. Promotions and Within Grade Increases (WIG's)

Promotions and within grade increases are computed without regard to continued rates of pay. After the computations are completed, the Agency must then make the comparisons described above and determine whether the continued rate of pay is still necessary.

Example 6d:

Jeff is receiving a continued rate of pay, $67,300. He is on a GS-13 step 2 special rate position in San Francisco. The special rate is $66,258, and the locality rate is $66,358.

- Jeff receives a within grade increase to step 3.
- The special rate for step 3 is $68,399, and the locality rate is $68,499.
- Since the locality rate for step 3 exceeds his continued rate of pay, he now is paid the locality rate, and his continued rate of pay ceases.

Example 6e:

Ruth is on a special rate position in Los Angeles at GS-13 step 4 ($75,604), and she is earning a continued rate of pay of $79,500. She is being promoted to GS-14. She must receive at least two steps more than her underlying special rate, not two steps more than her continued rate of pay. GS-13 step 6 on the special rate scale equals $77,690. $77,690 falls between the GS-14 special rates of step 2 ($76,925) and step 3 ($79,390), so her salary is set at step 3.

The locality rate for GS-14 step 3 in New York is $78,890. Since her continued rate of pay is still higher than either the locality rate or the special rate, she still receives that rate, which equals $79,500. Note: even though Ruth did not actually receive any additional money, she has received a promotion, which is considered to be an equivalent increase for starting a new waiting period for her next within grade increase.

Note: For examples 6d and 6e, the locality rates used were for the year 2000. The special rates used were illustrative only and are not necessarily existing special rates.

6-7. Termination of Continued Rates of Pay

We have seen that continued rates of pay terminate when either the locality rate or the underlying special rate exceeds the continued rate of pay.

Continued rates of pay also terminate when one of the following occurs:

a. An employee's duty station is no longer in one of the three areas for which there had been IGA's (New York, San Francisco, and Los Angeles). However, an employee who receives a temporary promotion or reassignment outside one of the three areas has his or her continued rate of pay reinstated when he or she returns to one of the three areas. An employee who is detailed out of one of the three areas does not lose the continued rate of pay during the detail.
b. An employee separates from Federal service. The continued rate of pay is not reinstated if the employee returns to the Federal government. However, if an employee has restoration rights following military service or recovery from a work related injury within 1 year, the employee would have the continued rate reinstated.

c. An employee is reduced in grade. This is true regardless of whether the reduction is voluntary or involuntary. Or
d. An employee is no longer in a position covered by a worldwide or nationwide special rate. However, if the worldwide or nationwide special rate is changed to a local rate while the employee remains in the same position, the employee retains the continued rate of pay.

Example 6f:

Candy is on a worldwide special rate, and she is receiving a continued rate of pay. If she is reassigned to another position with a local special rate, she loses her continued rate of pay. However, if she does not change positions but her worldwide rate schedule is changed to a local rate schedule, she keeps her continued rate of pay.

Chapter 7

GRADE AND PAY RETENTION

Note: Unless otherwise specified, the pay rates used in this chapter are from the 2000 pay schedules.

7-1. Introduction

This chapter explains basic and advanced concepts concerning grade and pay retention. The chapter also discusses the use of grade and pay retention as management tools.

7-2. Authority

a. Law on grade and pay retention: 5 USC 5361 to 5366
b. OPM regulations on grade and pay retention: 5 CFR 536
c. OPM regulations on determining qualifications of employees on grade retention: 5 CFR 337.102
d. NASA policy on special pay and allowance: Chapter 1 of NPG 3530
e. Law, placement of SES employees: 5 USC 3594
f. OPM regulations, pay retention for SES employees: 5 CFR 359.705

7-3. Grade Retention

7-3-1. Employee Eligibility

To be eligible for grade retention, an employee must be serving on a permanent appointment and must be coming to a covered pay schedule.

A ***permanent appointment*** means an appointment without time limitation, so employees on temporary and term appointments prior to the change to lower grade are not included. However, a permanent employee *converted* to a term or temporary appointment may be eligible for grade retention.

A ***covered pay schedule*** means the General Schedule and the Federal Wage System. Thus, if an employee is coming to a position in one of these pay systems, he or she is eligible for grade retention even if he or she is coming from another system. Exception: Employees coming from SES SL, and ST positions to a GS or FWS position are not eligible for grade retention. (Note: On May 25, 2000, OPM *proposed* a change in its regulations so that no employee coming from a system

other than GS or FWS would be covered by grade retention.) If the employee is coming from a pay schedule which is not covered to a covered pay schedule, he or she must be coming from an Agency as defined in 5 USC 5102 for grade retention to apply. The definition of Agency includes most executive agencies, the Library of Congress, and GPO from the legislative branch, but it does not include government-controlled corporations, the Postal Service, the Tennessee Valley Authority, the National Security Agency, and the General Accounting Office.

7-3-2. Mandatory Uses of Grade Retention

a. Reduction in Force (RIF)

When an employee who is eligible for grade retention is demoted in a RIF, the employee is entitled to grade retention, if he or she has 52 weeks above the grade to which he or she is being demoted. The 52 weeks must be consecutive, but it could have been at any time. The time could have been in more than one position and more than one Agency. It does not have to be at the grade that the employee is retaining.

Example 7a:

Bill was hired as a GS-4 on January 1, 1999, and he was promoted to GS-5 on July 1, 1999. On February 1, 2000, he was demoted to GS-3 by RIF. Since Bill had more than 52 consecutive weeks above GS-3, he is entitled to grade retention, and his retained grade would be GS-5. If the demotion had been to GS-4, Bill would not be entitled to grade retention because he did not have 52 weeks above GS-4.

Example 7b:

Joanne is hired as a GS-9 on January 1, 1995, and she resigned on February 1, 1996. On May 1, 1996, she is reinstated as a GS-7. On September 1, 1996, she accepts a change to a GS-6 position. On November 1, 1996, she is demoted by RIF to GS-5. Because she had 52 consecutive weeks above GS-5, from January 1, 1995 to February 1, 1996, she is entitled to grade retention. Because she is being demoted from a GS-6, her retained grade is GS-6.

It may be necessary to compare grades in different pay systems to determine whether the 52-week requirement has been met. Comparisons are based on representative rates. The representative rate for GS positions is step 4, and the

representative rate for FWS positions is step 2. Chapter 8 contains a further discussion of representative rates for other pay systems.

When determining whether the 52-week requirement is met, compare the representative rates only at the time of the demotion. This is important because sometimes the rates for FWS and GS positions change at different times during the year. Because of this, a GS grade might be higher than a FWS grade at one time, and during another part of the year, the FWS grade would be higher.

Example 7c:

On February 1, 1999, Toni is hired as a WG-5 employee. The representative rate (step 2) for WG-5 in his area is $10.75 per hour, which equals $22,435 per year ($10.75 times 2087 hours).

On March 1, 2000, the representative rate for WG-5 was raised to $11.30 per hour or $23,583 per year. On April 1, Toni is promoted to WG-6.

On May 1, 2000, Toni is moved by RIF to GS-5. The representative rate (step 4) for GS-5 during 1999 was $22,646, and the representative rate for GS-5 in 2000 was $23,506.

From February 1, 1999 to March 1, 2000, the representative rate for WG-5 was lower than GS-5, but with the raise on March 1, 2000, the representative rate for WG-5 became higher than GS-5. Therefore, on May 1, 2000, the effective date of the RIF, the representative rate for WG-5 was higher than for GS-5. Since Toni occupied the WG-5 position for more than 52 consecutive weeks, the 52-week requirement has been met, and she would be entitled to grade retention at WG-6, the grade she occupied at the time of the RIF. It doesn't matter that the representative rate for WG-5 was lower than for GS-5 for most of the time that she occupied the WG-5.

Grade retention is mandatory if the employee receives a RIF notice offering a lower grade position. Grade retention is also mandatory even if the Agency offers a lower graded position other than the one offered in the specific notice.

Example 7d:

Yogi is a grade 15 and is given a RIF notice offering him a grade 13 position with grade retention. During the notice period the Agency offers him a grade 14 in another directorate. Even though this offer is not part of the RIF process, Yogi is still entitled to grade retention.

b. Classification

When an employee is downgraded to correct a classification error or to implement a new classification standard, he or she is entitled to grade retention if the position that is being downgraded has been classified for at least 1 continuous year immediately before the downgrade. IN this case, the requirement is 1 calendar year, not 52 weeks. It does not matter how long the employee occupied the position.

Example 7e:

An Agency classified a GS-12 position on February 1, 1999. On October 1, 1999, Abby was promoted into the position. On March 1, 2000, Abby was downgraded to GS-11 because it was determined that the position was improperly classified. Abby is entitled to grade retention because even though she was in the position for less than a year, it had been classified for more than a year.

Keep in mind that when an employee is downgraded to correct a classification error or to implement a new standard, the Agency can take the action without regard to adverse action procedures if the employee will be entitled to grade retention. However, if the employee is not entitled to grade retention because the position has not been classified for a year, the Agency must use adverse action procedures if the employee is otherwise covered by those procedures.

7-3-3. Grade To Be Retained

In most cases the grade to be retained is relatively straightforward even when the employee is moving between GS and FWS positions. It's the grade that the employee occupies when the action is taken. For example, if an employee is moved from an FWS position to a GS position, he or she retains the FWS grade, and if he or she moves from a GS position to an FWS position, he or she retains the GS grade.

Although it is unlikely to occur, if an employee is coming from a schedule that is not covered, you must first determine whether the 52-week requirement is met. First compare representative rates. Once it is determined that the employee is being downgraded and that he or she is entitled to grade retention, the employee retains the grade in the covered pay schedule with the lowest representative rate which equals or exceeds the representative rate of the position from which he or she is coming. If there is no grade in the covered pay schedule with a representative rate that equals or exceeds the representative rate of the employee's former grade, the

employee retains the top grade in the pay schedule, (grade 15 if the employee is coming to a GS position).

Note: Computations are done using the basic General Schedule.

Example 7f:

On March 1, 2000, Bobby was moved from a position not in a covered pay schedule to a GS-9 position at KSC by reduction in force. He was earning $40,000 per year.

First, compare representative rates to determine if the action is a demotion.

- The representative rate for the position was $42,000.
- Since the representative rate for GS-9 (step 4) on the base GS schedule is $35,617, which is lower than the representative rate for Bobby's position, the action is a demotion.

Second, determine whether Bobby is entitled to grade retention. Bobby has occupied the position for more than 52 weeks, so he is entitled to retained grade.

Third, determine what grade Bobby will retain. GS-11 is the lowest GS grade with a representative rate ($43,096), which equals or exceeds the representative rate of Bobby's former position. Therefore, his retained grade is GS-11.

Finally, determine Bobby's salary. His salary within the grade is set using the HPR. His salary of $40,000 falls between GS-11 step 1, $39,178 and step 2, $40,484, so his salary is set at GS-11 step 2. Since KSC is in the RUS locality pay area, his actual salary will be $43,229.

(Note: if the proposed OPM regulations discussed in section 7-3-1 are implemented, this would no longer be an issue because Bobby and other employees coming from uncovered pay systems would not be eligible for grade retention.)

7-3-4. Grade Retention Entitlements

a. Use of the retained grade

When an employee retains a grade, that grade is used for most purposes including pay administration, retirement and life insurance. It is not used in subsequent RIF actions, and it is not used for determining status under the Fair Labor Standards Act. In addition, it is not used to determine whether an employee receives a subsequent demotion for the purpose of terminating grade retention.

Example 7g:

Donna is a GS-12 employee in Alaska who is demoted to a WG position in Seattle. She retains her GS grade. Even though she now occupies a WG position, any entitlements to premium pay will be governed by the rules for GS positions because she is retaining a GS grade. She does not retain the non-foreign area cost of living allowance which employees in Alaska receive, but she will receive the locality pay rate for Seattle.

Example 7h:

Elton is downgraded from GS-13 to GS-11 to correct a classification error, and he retains the grade of GS-13. Six months later, his agency conducts a RIF. Elton will compete as a GS-11.

While on grade retention, Elton voluntarily accepts a GS-12 position. Even though it is lower than his retained grade of GS-13, it is not lower than GS-11, so his grade retention is not terminated. (Note: process this action as a position change.)

b. Changes in pay schedules

If there is a change in the applicable schedule when an employee becomes entitled to grade retention, he/she is placed on the new schedule.

Example 7i:

Anne is a GS-13 on the regular GS pay schedule. She is demoted by RIF to a GS-12 medical officer position with a retained grade of GS-13. For pay purposes, she will remain a GS-13 on the special rate schedule for medical officers. If she were demoted to a GS-12 engineering position, she would retain GS-13 on the regular pay scale because there is no special rate scale for GS-13 engineers (except computer engineers).

When an employee changes pay schedules as described above, he or she is entitled to the greater of the rate of pay immediately before the demotion, the comparable step to the one formerly held, or the step in the new schedule which equals or exceeds the pay immediately before the demotion. If the salary cannot be accommodated on the pay schedule, the employee is paid a salary above the top step, which is designated as step 0.

Example 7j:

In 2000, Anne is demoted from the regular rate of GS-12 step 4, $51,650 to a GS-11 engineering position. She retains the grade of GS-12 on the engineering scale. Her salary is set at step 4 of that scale which is $53,215. After this computation is completed, remember that as explained in Chapter 5, you still must determine whether Anne should receive the special rate or the regular rate as augmented by locality pay. In this case, she will receive the regular rate as augmented by locality pay in all locations because using 2000 rates, even the lowest locality rate for the RUS ($55,152) is higher than the special rate of $53,215.

Example 7k:

Anne is demoted in 2000 from GS-12 step 4 on the engineering special rate scale, ($53,215) a to a GS-11 regular rate position. She retains the grade of GS-12 on the regular rate scale. Since step 5 on the GS-12 regular pay scale equals $53,215, Anne's salary is set at step 5 of GS-12. After this computation is completed, you must still add the appropriate locality pay. If for example, Anne is working at KSC her salary will be $56,823, which is GS-12 step 5 on the RUS locality pay scale.

c. Qualifications determinations

When an employee is on retained grade, his or her qualifications for promotion or other staffing actions are evaluated either on the basis of his or her retained grade or on the basis of the actual position that he or she now occupies, whichever is more advantageous. Once the employee is no longer on retained grade, the qualifications for the retained grade period are evaluated on the basis of the position that he or she actually occupied.

Example 7l:

On January 1, 1998, Howard was demoted from a GS-14 personnel specialist position to a GS-12 budget analyst position. He retains the GS-14 grade. On April 1, 1999, he applies for both a GS-15 personnel officer position and a GS-13 budget analyst position. When he is considered for the personnel officer position, the period from January 1, 1998 to April 1, 1999 is credited as GS-14 personnel experience; and when he is considered for the budget analyst position, that same period is credited as GS-12 budget analyst experience. On February 1, 2000, he applies for another GS-15 personnel officer position, but since his two years of grade retention has expired, the period from January 1, 1998 to January 1, 2000 can be credited only as GS-12 budget analyst experience.

7-3-5. Effect of Time-Limited Promotions

A time-limited promotion cannot be the basis for a retained grade.

If an employee on retained grade receives a time-limited promotion, his or her period of grade retention continues concurrently with the time-limited promotion and terminates without regard to the time-limited promotion.

Example 7m:

On January 1, 1999, Don is demoted from GS-11 to GS-9 with a retained grade of GS-11. On January 1, 2000, he receives a time-limited promotion for 2 years to GS-12. His grade retention terminates December 31, 2000, and his time-limited promotion terminates December 31, 2001.

7-3-6. Multiple Demotions

If an employee is on grade retention and receives a second demotion entitling him or her to grade retention, each operates independently of the other. The second period of grade retention begins at the time of the action and runs concurrently with the first period.

Example 7n:

On January 1, 1998, Dana is demoted from GS-15 to GS-13 with a retained grade of GS-15. On February 1, 1999, she is demoted to GS-11. She is entitled to retain the grade of GS-13, but she is still retaining grade 15. She retains grade 15 through December 31, 1999, and she retains grade 13 through January 31, 2001.

7-3-7. Termination of Grade Retention

Grade retention ends after 2 years. Note: This is exactly 2 calendar years and therefore may happen in the middle of a pay period.

Grade retention also terminates if an employee:

a. Has a break in service of one work day or more;
b. Is demoted for personal cause or at his or her own request from the grade actually occupied;
c. Is permanently placed in a grade equal to or above the retained grade;
d. Declines a reasonable offer of a position at or above the retained grade; or
e. Elects in writing to have grade retention terminated.

Later in this chapter, we will discuss optional uses of grade retention. If an Agency has granted optional grade retention to an employee, there is one more condition under which grade retention may be terminated. If an employee fails to enroll in or comply with the Agency's placement program for employees on grade retention, it terminates.

A demotion for personal cause includes both conduct and performance actions, but it does not include situations where a medical condition necessitates the demotion.

A demotion at the employee's request does not include situations where the employee requests a demotion following a management announcement of an action such as a RIF. We will discuss these situations later in this chapter.

If management has developed a special training program such as an upward mobility or apprentice program, an employee who accepts a demotion to enter such a program would not lose grade retention because it's a program initiated by management.

If during grade retention, an employee is placed in a position with a lower representative rate than the representative rate of the retained grade, of course, grade retention continues. This is true even if later the representative rate of the employee's actual position is raised. If the employee subsequently is moved to another position with this higher representative rate, grade retention would terminate.

Example 7o:

Phil is demoted from GS-9 to WG 8 and retains the grade of GS-9. On February 1, 1998, he is promoted to a WG-9 position.

At the time of Phil's demotion and subsequent promotion to WG-9, a WG-9 in Phil's wage area has a lower representative rate than GS-9. But on April 1, there is an increase in the applicable WG schedule, and the representative rate for WG-9 is now higher than that for GS-9. Phil continues on grade retention at GS-9. However, on July 1, Phil is *reassigned to another WG-9 position.* His grade retention now terminates because he has been placed in a position with a higher representative rate than his retained grade of GS-9.

For an offer to be reasonable, it must:

a. Be at a grade equal to or higher than the retained grade;
b. Be in writing;
c. Include the position description;
d. Explain the consequences of declination;
e. Explain that the employee may appeal the reasonableness of the offer to OPM;
f. Have the same tenure as the employee's tenure;
g. Have a work schedule with at least the same number of hours as the employee's current schedule; and
h. Be in the same commuting area unless the employee is subject to a mobility agreement.

An employee who loses grade retention because of declination of a reasonable offer can appeal to OPM.

All offers should be in writing, and declinations should be in writing. If an employee refuses to respond, that may be considered to be a declination. The Center should document the employee's failure to respond, and the offer should advise the employee that failure to respond would be considered to be a declination.

Declination of a reasonable offer can also cause an employee to lose eligibility for grade retention even before it begins.

Example 7p:

Doris is a GS-12 who receives a RIF separation notice. Outside of the RIF process, her agency offers her a GS-12 position in another component in the same commuting area. She declines that offer, and a few days later, her RIF notice is amended to offer her a GS-11. She would not be eligible for grade retention because she declined a reasonable offer at her current grade, which is the grade that she would retain.

Example 7q:

Doris receives a RIF separation notice, but this time, she receives an offer of a GS-11 position outside of the RIF process. She declines that offer, and later through the RIF process, she is offered a GS-9. She is entitled to grade retention because even though she declined an offer at a higher grade than the offer she received, it was not at GS-12, the grade that would become her retained grade.

7-3-8. Transfers to Other Agencies

An employee on grade retention who transfers to another Agency is entitled to continue grade retention. As a practical matter, the gaining Agency may advise the employee that it would not be able to offer the position unless he or she waives grade retention. Under a variety of circumstances, an Agency may offer to grant grade retention to an employee from another Agency. This will be discussed later in the chapter when we discuss optional uses of grade retention.

7-4. Pay Retention

7-4-1. Employee Eligibility

Pay retention applies to employees on permanent GS and FWS appointments at the time of the downgrade. If they are coming from other pay schedules, it applies as long as they are going into GS or FWS positions. It doesn't apply to employees coming from organizations that are not agencies as defined in 5 USC 5102. Pay retention may not be given to employees who are demoted for personal cause or at their own request or to employees who are demoted because they failed to complete the probationary period for managers and supervisors.

Note: On May 25, 2000, OPM proposed regulations which would give agencies the authority to grant pay retention for employees moving into or between pay systems in addition to the General Schedule and the Federal Wage System.

Be advised that there is more than one authority for pay retention, and the rules vary slightly. For example, employees removed from the Senior Executive Service and placed in GS positions may receive pay retention under 5 USC 3594. 5 USC 3594 covers a variety of situations such as former career employees who after moving from the competitive service to the SES fail to complete the SES probationary period, or SES employees affected by RIF. SES employees who meet one of the conditions set forth in 5 USC 3594 have placement rights in a civil service position, and they receive retained pay at the SES rate which they were earning. Unlike other employees receiving retained pay, they would not be subject to the Level V cap on GS pay (see Chapter 16), but they would be subject to the level IV cap for GS pay as augmented by locality pay (see Chapter 5). Note: SES members placed in a GS or FWS position are not eligible for grade retention.

There may be rare situations where NASA would decide to grant retained pay to an SES employee moving into a GS position under the authority of 5 CFR 536 as opposed to the authority of 5 USC 3594. For example, the employee accepts a GS position after an announcement of a reorganization but before any formal RIF action. In this situation, the employee would be subject to the Level V cap on pay.

Example 7r:

Tran is a SES level 3 employee, and he is placed in a GS-15 position at Langley under one of the conditions specified in 5 USC 3594. He may retain the base pay of $116,300 (the 2000 pay for SES level 3) even though it exceeds Level V of the Executive Schedule, $114,500. When augmented by the 6.78% locality rate for RUS, his pay would be $124,185, but this exceeds Level IV of the Executive Schedule, $122,400. Therefore, his actual pay would be $122,400.

If Tran were placed in the GS-15 position under conditions other than those specified in 5 USC 3594 but was granted retained pay under 5 CFR 536, his basic pay would be $114,500, which is the rate for Level V of the Executive Schedule. When augmented by the 6.78% locality pay, his actual pay would be $122,263.

Note: If an employee moving from the SES to a GS position is not given retained pay, the HPR rules described in Chapter 3 would apply.

7-4-2. Actions Covered

Pay retention must be granted to an employee whose pay would be reduced because of:

a. The end of the 2 year grade retention period;
b. RIF or reclassification when the employee does not meet the requirements for grade retention, e.g. does not have the required 52 weeks above the grade to which he or she is being demoted or the position has not been classified for a year;
c. Reduction or elimination of special rates;
d. Placement directed by management from a special rate position to a non-special rate or a lower special rate position;
e. Placement in a different pay schedule; or
f. Placement in a formal Government-wide employee development, apprentice, or career intern program.

If an employee is moved from a special rate to a non-special or lower special rate position for her personal convenience, she would not be eligible for pay retention. Essentially, it must be an action directed or influenced by management. Where the placement is not a directed action, the rules for movements between special and non-special rate positions discussed in Chapters 3 and 4 would apply.

Example 7s:

Lorna is a GS-15 step 10 medical officer at Dryden, $111,245. Management directs her reassignment to a GS-15 step 10 regular rate position, $100,897. Because the reassignment was directed, she is entitled to retain the pay of $111,245. In addition, that retained pay is augmented by the Los Angeles locality rate of 12.76%.
Therefore, she is theoretically entitled to $111,245 times 1.1276 equals $125,440. Since this exceeds the rate for Level IV of the Executive Schedule, $122,400, her final salary is set at that amount. Thus her reassignment from a special to a regular rate position actually results in a significant increase in salary.

7-4-3. Setting the Pay Rate

When an employee is entitled to pay retention, he or she receives the rate of pay equal to the rate being paid immediately before the action. If this rate falls within the rate range of the new grade, the employee receives the step that equals or exceeds the rate. *In this case, there actually is no entitlement to pay retention, since there would be no reduction in pay.* If the rate exceeds the top step of the grade, the employee receives that rate unless it is more than 150% of the top step of the grade, in which case, the employee only receives 150% of the top step of the grade.

Example 7t:

Kathy was in a GS-11 step 3 position at $41,790. To correct a classification error, she is being demoted to GS-9. Because the position has not been classified for a year, she is not entitled to grade retention. The *action* entitles her to pay retention. However, because her salary immediately before the demotion falls between GS-9 step 9 ($41,012) and step 10 ($42,091), her salary is set at GS-9 step 10. Since there is no reduction in pay, pay retention does not apply.

Example 7u.

Hector is in an uncovered position and is earning $58,000 per year, and he is being placed in a GS-9 position. He is entitled to pay retention. Because $58,000 is less than 150% of GS-9 step 10, he is entitled to retain the rate of $58,000. 150% times $42,091 equals $63,137. If Hector had been earning $65,000, his retained pay would be $63,137.

7-4-4. Entitlements While on Pay Retention

While on pay retention, employees receive 50% of comparability increases for the top step of their grade. This means that eventually their rate will fall into the range of their grade. When that happens, they are placed at the top step of the grade, and pay retention ends. If an employee is in a grade for which there is a special rate increase as opposed to a comparability increase, the employee does not receive any of that increase. This is true even if the percentage of the special rate increase was the same as the comparability increase. Employees on pay retention do receive full locality pay increases.

Example 7v:

Darron is in a GS-12 engineering position which has a special rate. He is receiving retained pay of $65,000. In 2001, the special rate and the comparability increase for regular rates are both 3%. Darron does not receive any increase.

If an employee is on pay retention and there is another action that would entitle him or her to pay retention, the original entitlement is not affected; there is no pay retention resulting from the second action.

Example 7w:

Bart is reduced from grade 13 step 10 to GS-12. He is entitled to pay retention, so he retains the salary of $72,586. A few months later, he is demoted to GS-5. He retains the pay of $72,586 even though 150% of GS-5 step 10 is only $41,667. If Bart had not been on pay retention when he was demoted from GS-12 to 5, he could have only retained the pay of $41,667 (150% of GS-5 step 10).

7-4-5. Termination of Pay Retention

Pay retention ceases to apply to any employee who:

a. Has a break in service of one work day or more;
b. Is demoted for personal cause or at his or her own request;
c. Becomes entitled to a rate of basic pay which is equal to or greater than the retained rate;
d. Declines a reasonable offer to a position with a rate equal to or greater than the retained rate.

For a further discussion of these conditions, see the discussion in section 7-3-7 concerning the termination of grade retention.

Pay retention is terminated whenever the employee is placed in a position with a rate equal to or higher than the retained rate. This is true even if the placement involves a move to a lower grade.

Example 7x:

Carla is retaining pay of $26,000. She is in a wage grade position with a representative rate of $11.40 per hour. She is moved into a GS-5 position. The representative rate for GS-5 is $11.26 per hour, ($23,506 divided by 2087) so it is a lower grade position. However, $26,000 falls between steps 7 ($25,642) and 8 ($26,354). Pay retention ends. Carla is placed at step 8 of GS-5.

An employee's eligibility for pay retention can be terminated at the beginning of the process if the employee declines a position with equal or higher pay than the employee's current position even if it's at a lower grade.

Example 7y:

Whitey is a GS-12 employee, but he has only been in the Government for 6 months, so he is not eligible for grade retention. He receives a RIF separation notice. Outside of the RIF process, he receives an offer of a GS-11 position at a step that exceeds his current salary. He declines the offer. Later he receives a RIF offer of GS-9. He may not be given pay retention because he already declined a reasonable offer with a pay rate that is equal to or exceeds his current rate of pay.

Unlike grade retention, an employee cannot waive pay retention if it is offered under one of the mandatory provisionss. However, if an employee waives grade retention, he or she can waive pay retention at the same time, and this is permitted.

7-5. Grade and Pay Retention as Management Tools

7-5-1. Optional Uses of Grade Retention

Agencies have the option of granting grade retention after a reorganization or reclassification has been announced in writing. This is true even if the employee has not received a specific notice, although the action must have the potential to affect the employee adversely. To be eligible, the employee must meet the 52-week requirement of being in a grade above the grade to which he or she is being demoted. The 52-week requirement applies both for reorganizations and reclassifications when the Agency is making optional use of grade retention.

Once the announcement of the reorganization or reclassification is issued, either the Agency may offer the lower graded position or the employee may initiate the request.

The offer of grade retention must be in writing. The offer should explain what grade retention is and that it only lasts for 2 years. It also should explain that the retained grade will not be used in subsequent RIF's. The employee should sign a statement indicating that he or she understands that the acceptance of the position is voluntary and that he or she understands the benefits and limitations of grade retention. Centers should be very careful to ensure that employees understand what their rights would be if a RIF occurs so that employees cannot later claim that they were placed in a position in violation of RIF rights.

7-5-2. Optional Uses of Pay Retention

Centers have wide latitude to make optional use of pay retention. Examples of situations where Centers may wish to grant pay retention include:

a. Movement into Agency training programs;
b. Placement of an employee who has become disabled for his or her position;
c. Placement of surplus employees; or
d. Placement of employees in a lower paying position in their commuting area if they decline a reassignment or transfer of function to another commuting area.

Agencies have the discretion of offering grade or pay retention to employees coming from other agencies. This is strictly at the gaining Center's option. For NASA to be able to offer grade retention, the employee must either have a specific RIF notice or a written announcement of a pending reorganization or reclassification. NASA may offer pay retention if an employee in the losing agency is facing an action that would cause his or her pay to be reduced.

Chapter 8

MOVEMENT BETWEEN PAY SYSTEMS

8-1. Introduction

This chapter explains the factors to be considered when employees are moving between pay systems. The emphasis is on movements into the General Schedule. Movements into the Federal Wage System will be covered in Chapter 17.

It is not possible to discuss the specifics of every different pay system, but the chapter will help you to know what factors to consider when you are confronted with a different pay system.

8-2. Authority

a. Law covering General Schedule: 5 USC Chapter 51:
b. Law, Rate on change of position or type of appointment: 5 USC 5334
c. Law, Miscellaneous pay provisions: 5 USC 5371 to 5379
d. OPM Regulations, Pay under other systems: 5 CFR 534

8-3. The General Rule

While it's not spelled out anywhere, the general rule of thumb is that when an employee is moving between pay systems, you use the rules of the system the employee is moving into. For example, if an employee is moving into the General Schedule, you follow the GS rules. If an employee is moving into the FWS, you use the rules for that system.

8-4. Understanding Other Pay Systems

8-4-1. Authority

Pay systems can be established outside the General Schedule or the Federal Wage System but still be under provisions of Title 5 of the United States Code (5 USC). For example, the pay system established for senior level positions is outside the General Schedule, but it is still part of Title 5. This is important because it means that some aspects of the system are still governed by Title 5. For example, the maximum salary is level IV of the Executive Schedule, and OPM still has the authority to issue regulations.

Other systems are established totally outside of Title 5, such as the Foreign Service pay system in Title 22, the Department of Veterans Affairs system for health personnel in Title 38, the Postal Service system in Title 39, and the system for NASA Excepted positions in Title 42 (The Space Act).

Sometimes Title 5 will authorize agencies to use certain aspects of other pay systems. For example, 5 USC 5371 authorizes the Department of Health and Human Services, the Defense Department, and the Bureau of Prisons to use certain aspects of Title 38. Employees remain under the General Schedule, but they can have their salaries augmented with some of the special pay authorized under Title 38.

8-4-2. Structure of Pay Systems

Pay systems can either be graded such as the General Schedule or the Federal Wage System, or they can be ungraded. When a system is ungraded, salaries usually can be set at any rate within a broad range. For example, the senior level pay system is ungraded. Employees can be paid at any rate between 120% of the first step of GS-15 and the rate for Level IV of the Executive Schedule.

8-4-3. Determining Representative Rates

As discussed in Chapter 7, the representative rate for the General Schedule is step 4 of the grade, and the representative rate for FWS positions is step 2. Generally if the system is ungraded such as the senior level system, the representative rate is simply the rate which the employee is being paid. Because it is not always possible to know what the representative rate is for every pay system or schedule, Centers should contact the Office of Human Resources and Education for assistance. OPM may have information on representative rates for Government wide systems. If it is an Agency-specific system, that Agency will probably have the information on representative rates. If a representative rate has not been established for a system, then the employee's current salary should be used as the representative rate.

Some systems are established in the same pattern as the General Schedule. They may be designated as GG. When you see the GG designation, this means that the Agency has separate authority to establish a pay system but has chosen to establish a system parallel to the General Schedule. However, be careful because the Agency may have instituted variations, which are not immediately obvious. They have the authority to do this, and these variations could affect how you set pay when the employee moves out of that system.

8-4-4. Understanding a System's Structure

Like the General Schedule, other systems have various components. There is the component that is considered basic pay for most purposes, and then there may be

other payments that cannot be used for certain purposes. For example, a GS employee receiving a retention allowance may not have that allowance considered as basic pay for any purposes. Therefore, it would be improper to consider the retention allowance when setting the GS employee's pay in another system.

The Department of Veterans Affairs pay system has a basic pay component, and then it has various additions, some which are considered basic pay. However, other additions may not be considered to be basic pay. The Agency that administers the pay system can provide information concerning which components of an employee's pay are considered basic pay and which are not. Generally when setting salary, you should not consider those elements which are not considered to be part of basic pay.

Some pay systems may have a system comparable to locality pay, and if that is the case, it would not be proper to use the locality pay as the employee's basic pay when setting the pay in the General Schedule. This is because the employee would then get the benefit of the former Agency's locality pay plus the locality pay that applies to the General Schedule.

8-4-5. Demonstration Projects

Many agencies have been given authority to conduct demonstration projects, which have their own unique rules. Most projects have established policies and procedures for employees who leave the project's pay system. If an employee is coming to a Center from a demonstration project, the best advice is to contact the Agency conducting the project to obtain information concerning any special pay setting requirements.

8-5. Setting The Pay

For purposes of this chapter, we will focus on movements into the General Schedule, but the same process should be followed when employees are moving between pay systems.

1. Find out which pay system the employee is under.
2. Get the pertinent information about the system which should include:
    a. How is the representative rate determined?
    b. Is the whole salary basic pay or are there various components?
    c. If there are other components, what are they and what does the agency allow them to be used for?
3. Determine whether the action is a promotion, reassignment, or change to lower grade.
4. Apply the pay-setting rules appropriate to the type of action.
5. Determine whether HPR, retained grade or pay retention applies.

Refer to Chapters 3 and 7 for further information on these topics. Remember that retained grade must be determined on the basis of representative rates. Also, retained grade and pay may not be granted if the employee is coming from an organization that is not an Agency under 5 USC 5102. Thus, for example, retained grade or pay may not be granted to an employee who is coming from the Postal Service because the postal Service is not an Agency as defined in 5 USC 5102.

If grade or pay retention cannot be granted, HPR may still be available. For example a salary earned in the Postal Service may be used as the HPR even though the Postal Service is not an Agency for purposes of grade and pay retention.

If it is determined that neither HPR nor retained grade and pay apply, the employee's salary will probably have to be set at the first step of the grade.

8-6. Promotions

The two-step rule for GS promotions discussed in Chapter 4 applies only to promotions within the General Schedule, or from a non-Title 5 position into a GS position. It does not apply to promotions from other Title 5 pay systems into the General Schedule. For example, the Supreme Court ruled in United States V. Clark that FWS employees moving into the General Schedule were not entitled to a two-step increase in their salaries. Their pay may be set under the HPR.

8-7. Reduction in Force (RIF)

If you find yourself conducting a RIF in a competitive area which has more than one pay system, you must determine the representative rate for each system. In a RIF, an employee has no rights to move to a position with a higher representative rate than his or her current representative rate. For RIF purposes this would be a promotion, and promotions are not permitted in a RIF. If there is any question about what the representative rate is for a particular pay schedule, contact the Office of Human Resources and Education for assistance.

Example 8a:

Mark is in an ungraded pay system for which his agency has special authority. He is earning $75,000 per year. He has career tenure and veteran preference. In a RIF, he cannot bump a GS-15 non-veteran because in 2000 the representative rate for GS-15 is $85,375. Since Mark is in an ungraded system, his representative rate is $75,000 which is lower than GS-15.

8-8. Documenting Movements Between Pay Systems

Because of the different entitlements under various pay systems, Centers should carefully document all movements between pay systems. Employees should be given a letter explaining what their new salary will be and any changes in the conditions under the new pay system, for example, different intervals of time for within grade increases.

Chapter 9

MOVEMENT FROM GM TO GS

9-1. Introduction

This chapter discusses the termination of the Performance Management and Recognition System (PMRS) and how it affects pay setting for current employees. The chapter explains how to set pay for employees who are labeled as GM, how to determine when the GM designation should be removed and how to set pay when an employee moves from GM to GS.

9-2. Authority

a. The Performance Management and Recognition System Termination Act of 1993 (Public Law 103-89) Note: This law was never codified into Title 5 of the United States Code.
b. Interim regulations issued December 15, 1993, (58 FR 65,531) to be effective November 1, 1993: These regulations eliminated part 540 of the CFR and changed other parts of the regulations including 530, 531, and 536 to conform to the termination of the PMRS.

9-3. Background

The Civil Service Reform Act of 1978 established the merit pay system for supervisors and management officials at grades 13 to 15. The merit pay system later became the PMRS. Effective November 1, 1993, the PMRS was terminated, and all employees in it reverted to the General Schedule.

If all employees in fact reverted to the General Schedule, the logical question is why did the GM designation remain? Even though technically former PMRS employees became GS employees, their salaries were not changed to the ten steps of the grades. Their salaries remained as they were at dollar amounts ranging from the bottom to the top of their grades. In fact, a small number of PMRS employees who had performed below fully satisfactory had salaries below the first step of their grades. To avoid massive systems problems, it was determined that the most practical approach was to continue former PMRS employees on the GM designation. However, this does not alter the fact that they are actually General Schedule employees.

9-4. Pay setting for GM Employees

9-4-1. General Rule

In most situations, GM employees have their pay set just like GS employees, but as explained above, you must often use the actual dollar amounts because they are not at the ten steps of their grades.

9-4-2. Within Grade Increases (WIG's)

A GM employee whose salary is below the 4th step of the grade has a 52-week waiting period. A GM employee whose salary is below the 7th step has a 104-week waiting period, and employees with salaries at or above the 7th step have a 156-week waiting period. This is true even if the salary is only one dollar below the 4th or 7^{th} step.

Example 9a:

In 2000, Sean is a GM-13 employee earning $61,419. Because the 4th step of the grade is $61,420, his waiting period for his within grade increase will be 52 weeks. Each step of the grade is $1,861, so when he receives his increase, his new salary will be $61,419 plus $1861 equals $63,280, which is just below step 5.

9-4-3. Annual Pay Raises

When determining the new salary for a GM employee after an annual pay raise, the following rules are used. In most cases, the payroll system will determine the new salaries automatically, but it is important to understand the process if employees have questions.

a. For employees at the minimum or maximum rates of the grade, set their salaries at the new minimum and maximum rates.
b. For employees with salaries below the first step of the grade, multiply their salary by the percentage of the pay increase.
c. For all other employees, use the following procedure, which is similar to the procedure described in Chapter 3 to determine the HPR and MPR for former GM employees. In most cases, multiplying the old salary by the percentage of the pay increase will yield the same result, but there may be some cases when it will be off by a dollar or 2.
    (1) Subtract the minimum salary of the grade from the employee's salary in effect before the pay increase.
    (2) Subtract the minimum rate for the grade from the maximum rate for the grade in effect immediately before the pay increase.

(3) Divide (1) by (2) and carry the answer to the 7th decimal place, truncating not rounding off.
(4) Subtract the minimum rate from the maximum rate of the grade following the pay increase.
(5) Multiply (3) by (4) and round to the next whole dollar.
(6) Add (5) to the minimum rate for the grade following the pay increase, which will be the new salary.

Example 9b:

Tanya hadn't been performing too well, so her salary was far below the first step of her grade when PMRS terminated. In 1999, her GM-13 salary was $50,000, which was below the first step of $53,793. Her 2000 salary will be $50,000 times 1.038 (reflecting the 3.8% pay increase) equals $51,900. The first step of the grade in 2000 is $55,837.

Example 9c:

In 1999, Frank's GM-13 salary was $54,794. The rate range for the grade was $53,793 to $69,930. The difference between Frank's salary and the minimum rate for the grade is $54,794 minus $53,793 equals $1,001. The difference between the maximum and minimum rates of the grade is $69,930 minus $53,793 equals $16,137. $1,001 divided by $16,137 equals .0620313. In 2000, the rate range for the grade is from $55,837 to $72,586. The difference between the minimum and maximum rates is $72,586 minus $55,837 equals $16,749. $16,749 times .0620313 equals $1038.96 rounded to the next dollar is $1,039. Frank's salary will be $55,837 plus $1,039 equals $56,876.

9-5. Movement from GM to GS

A GM employee will keep his or her GM designation if there are no personnel actions. Also, if he or she is reassigned to another GS position which is a supervisor or management official as defined in 5 USC 7103(a)(10) and (11), he or she keeps the GM designation. Remember, the definition referred to here is the labor relations definition for supervisors and management officials. This is different from the classification definition. For this reason, Center labor relations staffs should be consulted when determining whether a position meets the definition.

A GM employee loses the GM designation if he or she transfers to another Agency, is promoted, is changed to a lower grade, is reassigned to a GS position which is not a supervisor or management official, or has a break in service of more than 3 calendar days. Even if an employee only has a temporary promotion, the GM designation is gone for good. A detail has no effect on the GM designation.

9-6. Pay Setting When Moving from GM to GS

If an employee is reassigned from a GM position to a GS position, which is not a supervisor or management official, the employee's salary remains the same if it equals one of the steps of the grade. Otherwise, it is moved to the next higher step. The same would apply if the employee transfers to another Agency. If a GM employee is changed to a lower grade, apply HPR and MPR rules. Of course, the salary must be set at one of the steps of the new grade. If a GM employee is promoted to a GS position, apply the GS promotion rules explained in Chapter 4. Add two steps to the employee's current salary, and if the result falls between two steps of the higher grade, set the employee's salary at the higher step.

Example 9d:

Loretta is a GM-14 employee earning $75,000. She is promoted to GS-15. Each step of grade 14 is $2,199. Her GS-15 salary must be at least $75,000 plus $2,199 times 2 equals $79,398. $79,398 falls between GS-15 step 1, $77,614 and step 2, $80,201, so her salary is set at GS-15 step 2.

Chapter 10

LAW ENFORCEMENT OFFICERS

10-1. Introduction

This chapter explains:

- The definition of law enforcement officer (LEO) for pay purposes;
- How this definition relates to the retirement definition;
- Special law enforcement adjusted rates of pay for various geographic areas and how these adjustments are used for pay purposes;
- Special law enforcement rates established by section 403 of FEPCA and how they relate to special rates established under 5 USC 5305;
- Using special rates, special adjustment factors and locality pay when determining pay rates;
- Overtime rates; and
- Limits on premium pay;

10-2. Authority

a. Sections 403 and 404 of the Federal Employees Pay Comparability Act (FEPCA)
b. Law, premium pay for law enforcement officers: 5 USC 5541, and 5542
c. Law, retirement definitions for law enforcement officers: 5 USC 8331, and 8401
d. OPM Regulations, special pay adjustments for law enforcement officers: 5 CFR 531.301 to 307

10-3. Definition of Law Enforcement Officer for Pay Purposes

The information in this chapter deals with law enforcement officers who are covered by chapter 51 of Title 5 of the United States Code. Generally this means GS or SES employees. The pay definition for law enforcement officers is contained in 5 USC 5541, 5 CFR 531.301, and 5 CFR 550.103. The definition is tied to the retirement definition for law enforcement officers contained in 5 USC 8331 for CSRS employees and 5 USC 8401 for FERS employees.

Law enforcement officers who meet the definitions in 5 USC 8331 or 8401 respectively receive enhanced retirement benefits. They can retire early, and their annuity is computed under a more generous formula. Formerly only OPM could approve law enforcement officers for coverage under the special retirement provisions, but now agencies have this authority.

The determination of whether an individual is a law enforcement officer is based on the duties of the position which the employee occupies. Generally the duties of a primary law enforcement officer position must be concerned with the investigation, apprehension, or detention of persons suspected of or convicted of crimes against the laws of the United States. There are some subtle differences between the CSRS and FERS definitions, but they aren't relevant for pay purposes. If an employee's position meets the definition of a primary law enforcement officer, the employee will be given law enforcement officer retirement coverage and will be a law enforcement officer for pay purposes.

There are secondary law enforcement officer positions. These are supervisory or administrative law enforcement positions. If a CSRS primary law enforcement officer transfers to a secondary position, law enforcement retirement coverage continues for that employee. A FERS employee must have at least 3 years in a primary position before transferring to be able to continue retirement coverage. Employees who meet these requirements continue to be law enforcement officers for pay purposes.

Some employees are in secondary law enforcement positions, but because they did not transfer from primary positions or for FERS employees did not have 3 years in a primary position before they transferred, they do not have law enforcement retirement coverage. However, they are considered to be law enforcement officers for pay purposes.

Example 10a.

Danny was hired into his first Federal position as a supervisory police officer. It has been determined that police officers in his agency are primary law enforcement officer positions and that the supervisory position is a secondary position. Danny will not receive law enforcement retirement coverage because he did not move into the secondary position from a primary Federal position. However, he will be a law enforcement officer for pay purposes.

Finally, there are some employees who may not be covered by CSRS or FERS but who are performing law enforcement duties. If OPM determines that the duties of these employees' positions are in fact law enforcement duties, the employees would be law enforcement officers for pay purposes. They, of course, would not be law enforcement officers for retirement purposes. NASA probably does not have any of these individuals.

10-4. Special Law Enforcement Adjusted Rates of Pay for Various Geographic Areas

FEPCA established adjustment factors for law enforcement officers in several geographic areas. These factors were 4%, 8%, or 16% depending on the area. The special law enforcement adjusted rate of pay equals the employee's scheduled annual rate of pay multiplied by the appropriate factor. Under the law, law enforcement officers would receive either the adjusted rate or the locality rate which ever was higher. In the beginning, these adjustment factors were more than locality pay adjustments, but as locality pay has increased each year, it has overtaken the adjustments in Chicago, Philadelphia, and Washington, DC, which were 4% and San Diego which was 8%. In 2000, there are only four areas left where the special adjustment factors are still used. The areas are Boston, New York, Los Angeles, and San Francisco, where the factor is 16%.

The LEO locality pay areas include the same geographic boundaries as regular locality pay areas.

Example 10b.

In 2000, the locality rate for San Francisco is 15.01%, and the special law enforcement adjustment is 16%. If in 2001, the total locality adjustment exceeds 16%, the special law enforcement adjustment will no longer be applicable because it will be less than locality pay. The law enforcement adjustments do not change from year to year. They are set by law.

Like locality pay, a special law enforcement adjusted rate of pay may not exceed level IV of the Executive Schedule for General Schedule employees or Level III of the Executive Schedule for SES employees (see Chapter 5).

Example 10c:

Don is hired as a GS-15 step 10-law enforcement officer in New York. The basic rate for GS-15 step 10 is $100,897. His special law enforcement adjusted rate will be $100,897 times 1.16 equals $117,041. Since this is less than $122,400, the rate for Level IV of the Executive Schedule, Don can keep his full salary. On the other hand, if he had been in the SES earning a rate of $122,200, his special law enforcement adjusted rate would be $122,200 times 1.16 ($141,752). This rate exceeds the rate for level III of the Executive Schedule ($130,200 in 2000). Therefore, in 2000, he could earn only $130,200.

10-5. Uses of Special Law Enforcement Adjusted Rates

A special adjustment factor is used in the same manner as locality pay. It is basic pay for retirement including the thrift plan, life insurance, premium pay, the Fair Labor Standards Act, pay advances for new employees, workers compensation, severance pay, and lump sum annual leave payments. It may not be used when determining promotions, WIG's, HPR, pay retention, or the dollar amount of recruitment bonuses, relocation bonuses, and retention allowances.

If an employee leaves an area with an adjustment and goes to one without it, the employee receives the locality pay for the new area.

Example 10d:

Denita is a GS-5 step 1-law enforcement officer in san Francisco earning $30,571. She is reassigned to Huntsville. Her new salary will be $28,257, which reflects the locality rate of 7.22% as opposed to the 16% law enforcement adjustment in San Francisco. Note: As a GS-5 law enforcement officer, she is also receiving a national special rate, so her salary is higher than other GS-5 employees. These special rates will be explained in the next section.

10-6. Special Rates Established Under Section 403 of FEPCA

Section 403 of FEPCA established special rate scales for law enforcement officers at GS-3 to 10. These rates are separate from any rates established under 5 USC 5305. OPM does not conduct an annual review of these special rates, and they are raised each year by the amount of the annual pay increase for the General Schedule. In 2000, the increase for the General Schedule was 3.8%, so these rates were increased by that amount. Special rates established under section 403 of FEPCA are the rates used when computing special law enforcement adjusted rates or locality pay. This is in contrast to rates established under 5 USC 5305 which are not used. OPM publishes law enforcement pay tables, so you don't actually have to do the computations (see http://www.opm.gov/oca/01tables/LEOann/html/491.htm). The law enforcement rates for grades from 1 to 15 for all the locality areas can be found on OPM's website.

Example 10e.

The 2000 special law enforcement rate for GS-9 step 1 is $33,459. The special law enforcement adjusted rate for San Francisco is $33,459 times 1.16 equals $38,812. In Cleveland, the 2000 locality rate for a GS-9 step 1 law enforcement officer is $33,459 times 1.0805 equals $36,152.

10-7. Determining Pay Rates

A law enforcement officer at grades GS-3 to 10 is paid the greater of:

a. The special rate established under section 403 of FEPCA plus the special adjustment factor,
b. The special rate established under section 403 of FEPCA plus locality pay,
c. A special rate established under 5 USC 5305, or
d. A continued rate of pay under 5 CFR 531.307.

Example 10f:

Lance is a GS-9 step 2-law enforcement officer in San Francisco. As explained above, San Francisco has the 16% special law enforcement adjustment, which still exceeds the locality rate of 15.01%.

- In the absence of a special rate under 5 USC 5305, his salary would be $40,064 which is computed by multiplying the special rate established under section 403 of FEPCA, $34,538 times 1.16.
- If Lance's agency has obtained a special rate for law enforcement officers under 5 USC 5305, the rate for GS-9 step 2 would have to be compared against $40,064.
- For our example, let's assume that the special rate under 5 USC 5305 was $41,500.
- Lance's salary would be $41,500.

Law enforcement officers at grades other than GS-3 to 10 earn the greater of:

a. The basic GS rate plus the special law enforcement adjustment factor
b. The basic GS rate plus any applicable locality pay rate;
c. A special rate established under 5 USC 5305; or
d. A continued rate of pay under 5 CFR 531.307.

Example 10g.

Let's say that Lance was a GS-11 step 1-law enforcement officer in San Francisco. Because the San Francisco special law enforcement adjustment factor of 16% exceeds locality pay of 15.01%, his pay would be $45,446 which equals $39,178, the basic GS rate times 1.16. If there were a special rate under 5 USC 5305 that exceeded that, he would receive the special rate. For purposes of our example, let's assume that the special rate for GS-11 step 1 was $46,115. In that case, his

10-8. Continued Rates of Pay

Continued rates of pay for law enforcement officers are similar to continued rates for other employees explained in Chapter 6. When special law enforcement adjustment factors were first established, law enforcement officers who were receiving nationwide or worldwide special rates under 5 USC 5305 were paid the special adjustment factor on top of that rate. The regulations were changed, so an employee could no longer receive the adjustment factor on top of the special rate established under 5 USC 5305. In some cases, this would have meant that an employee's salary would have been reduced. To avoid any reductions, OPM issued 5 CFR 531.307 establishing a continued rate of pay.

As explained above, if an employee is receiving a continued rate of pay, you must determine whether it exceeds any of the other entitlements that the employee has. This applies to all of the areas for which there had been special adjustment factors even if locality pay now exceeds those factors. It is unlikely that NASA has any of these situations, but it is being mentioned in case Centers encounter an employee coming from another Agency.

10-9. Overtime Rates

For law enforcement employees whose rate of basic pay does not exceed the rate for GS-10 step 1, the overtime rate is 1.5 times the hourly rate. The rate used includes any applicable special rate and a special law enforcement adjustment, or a locality rate whichever is applicable. For an employee whose rate of pay exceeds GS-10 step 1, the overtime rate is the greater of 1.5 times the rate for GS-10 step 1 or the actual rate for the employee's grade and step. These rates include applicable special rates, special law enforcement adjustment factors, or locality rates as applicable. Note the rules for law enforcement officers are different than the rules for other employees.

Example 10h.

Sally is a GS-13 step 1 law enforcement officer in Los Angeles earning $64,771 per year. Her hourly rate of pay is $31.04 ($64,771 divided by 2,087). The annual salary rate for GS-10 step 1-law enforcement officers in Los Angeles is $42,743, and the hourly rate is $42,743 divided by 2,087 equals $20.48. 1.5 times $20.48 equals $30.72, which is less than Sally's hourly rate. Therefore, Sally's overtime rate will be $31.04 per hour.

Note: The limits on overtime rates described here do not apply to employees covered by the Fair Labor Standards Act. Overtime rates for those employees are calculated in accordance with 5 CFR 551.

10-10. Limits on Premium Pay

In any pay period, a law enforcement officer's salary plus premium pay may not exceed the lesser of 150% of the rate for the first step of grade 15 or the rate for level V of the Executive Schedule. When calculating the rate for GS-15, include locality pay or a law enforcement adjustment factor and applicable special rates. In 2000, the rate for Level V is less than 150% of GS-15 step 1 in all locations in the continental United States. This is because the lowest locality rate for GS-15 step 1 is $82,876 in RUS; 1.5 times $82,876 equals $124,314, which exceeds $114,500 the rate for Level V of the Executive Schedule. Therefore, in the continental United States, salary plus premium pay in a pay period for a law enforcement officer may not exceed $4389.08 ($114,500 divided by 2,087 times 80). *

OPM publishes information on the maximum rates each year (see www.opm.gov for the current rates.

Note: These limits on premium pay do not apply to law enforcement officers covered by the Fair Labor Standards Act.

* based on rates payable in the year 2000

Chapter 11

AVAILABILITY PAY

11-1. Introduction

This chapter explains what availability pay is, and to whom it applies. It also explains the pay administration aspects of availability pay.

11-2. Authority

a. Law authorizing availability pay: 5 USC 5545a
b. OPM Regulations implementing availability pay: 5 CFR 550.181 to 187

11-3. Definition and Coverage

Availability pay is premium pay intended to compensate certain criminal investigators for having to perform unscheduled duty or having to be available to perform unscheduled duty.

Availability pay applies only to criminal investigators classified in the 1811 series and game law enforcement officers classified in the 1812 series. It applies to GS employees and other employees who would be classified in the 1811 or 1812 series if they were covered by the General Schedule. Availability pay does not apply to members of the SES.

To be eligible for availability pay, employees must meet the definition of law enforcement officer contained in 5 USC 5541 (see Chapter 10).

11-4. Computation of Availability Pay

Availability pay equals 25% of basic pay, which includes law enforcement special adjustments or locality pay (see Chapter 10). Because availability pay is premium pay, it is subject to the maximum limitation on premium pay for law enforcement officers contained in 5 CFR 550.107 and explained in Chapter 10.

11-5. Mandatory Nature of Availability Pay

Availability pay is essentially mandatory. There is a requirement that the employee and the supervisor annually certify that the employee will perform the amount of unscheduled duty required by 5 CFR 550.183. However, the regulations also provide that the Agency must ensure that the employee will be able to perform this amount

of unscheduled duty. In other words, while there must be a certification, the Agency really has no option but to certify.

5 CFR 550.183 requires that the employee must perform an average of 2 hours of unscheduled duty for each work day. Unscheduled duty hours in this context include those hours during which the employee performs work or is determined by the Agency to be available to perform work. Unscheduled duty hours do not include overtime scheduled in advance of the administrative workweek beyond the first 2 hours of scheduled overtime on a day which is part of the employee's basic 40 hour work week.

Example 11a.

Tim is an investigator who has 260 workdays in a year. The agency has determined that he has 500 hours of unscheduled duty. In addition, he is scheduled to work 3 hours of overtime on each of 30 Fridays. Friday is part of his workweek. He is also scheduled to work 5 hours of overtime on each of 10 Saturdays. Saturday is not part of his scheduled workweek. When determining which hours can be counted toward the certification requirement, the Agency may count the first 2 hours of overtime scheduled on the Fridays. The third hour of overtime on each Friday may not be counted. The hours of overtime for Saturday may not be counted because Saturday is not part of Tim's 40-hour workweek. Since the Agency can count 2 hours of overtime scheduled for each of 30 Fridays, it can add 60 hours to the 500 hours of unscheduled duty resulting in a total of 560 hours. Since Tim has 260 workdays, he has an average of more than 2 hours of unscheduled duty hours for each day. 560 divided by 260 equals 2.15. Therefore, the Agency could certify that he meets the requirements for availability pay.

To be considered available for work, an employee must be determined by the Agency to be generally and reasonably accessible to perform work. The Agency will place the investigator in availability status by directing that the employee be available during designated periods. A designation of availability status is not scheduling the employee for overtime, and the employee is not entitled to any overtime payment beyond availability pay.

There also may be situations where employees can designate themselves to be in availability status. This must be done in accordance with Agency policy.

11-6. Opting Out of Availability Pay

Employees may opt out of availability pay for temporary periods if they cannot perform overtime work because of a hardship such as the need to care for a family member. It would be appropriate to permit the employee to opt out of availability pay if the hardship is likely to continue for so a long enough period that the employee would not be able to have an average of 2 hours of unscheduled duty hours per work day for the year. The decision to permit an employee not to work unscheduled duty hours is solely the Agency's to make. If an Agency permits an employee to opt out, the employee must sign a statement stating that he/she understands that he/she will not be receiving availability pay and that the decision to opt out is voluntary. Agencies should be cautious about letting employees opt out for long periods of time and then having them opt back in a few years before retirement, because availability pay will increase the high 3 average salary.

11-7. Elimination of Availability Pay

If the Agency determines that an employee has failed to perform a sufficient number of unscheduled duty hours, it may suspend availability pay. Also, there may be situations where the employee is not able to perform the required number of unscheduled duty hours, e.g., because of medical problems. In these cases the Agency may suspend the availability pay certification. However, any such suspension is an adverse action, and the employee would be entitled to full adverse action procedures. In other words, if the Agency takes availability pay away while the employee remains in the position, it's an adverse action. However, if the Agency reassigns the employee to a position which is not covered by availability pay, in another series, the employee no longer is entitled to availability pay, and this is not an adverse action, see Martinez V. MSPB, Court of Appeals for the Federal Circuit, 96-3354, October 15, 1997.

11-8. Uses of Availability Pay

Availability pay is treated as basic pay for:

a. Advances in pay under 5 USC 5524
b. Severance pay
c. Workers compensation
d. Retirement and thrift savings
e. Life insurance
f. Lump sum annual leave payments.

11-9. Relation of Availability Pay to Other Premium Pay

An employee receiving availability pay may not also receive standby pay or administratively uncontrollable overtime. An employee receiving availability pay may not receive additional compensation for unscheduled overtime. (Unscheduled

overtime is overtime not scheduled in advance of the employee's workweek.) With respect to overtime scheduled in advance of the employee's workweek, an employee receiving availability pay may not receive additional overtime compensation for the first 2 hours of overtime occurring on any day containing part of the employee's basic 40-hour workweek.

Example 11b:

Joyce is receiving availability pay. Her basic workweek is Monday through Friday. Prior to the beginning of the week, she is scheduled to work 3 hours of over time on Monday and 4 hours of overtime on Saturday. She will be paid for 1 hour of overtime on Monday because the first 2 hours are covered by availability pay. She will be paid for all 4 hours of overtime on Saturday because Saturday is not part of her 40-hour basic workweek.

11-10. Relation to Fair Labor Standards Act (FLSA)

While covered by availability pay, the employee is exempt from overtime provisions of the Fair Labor Standards Act. If an employee opts out of availability pay or availability pay is suspended or terminated, the Agency would have to determine whether the position is covered by the Fair Labor Standards Act, applying the usual FLSA requirements.

Chapter 12

WITHIN GRADE AND QUALITY STEP INCREASES

12-1. Introduction

This chapter covers within grade increases (WIG's) and quality step increases (QSI's) in the General Schedule. Chapter 17 explains WIG's for the Federal Wage System (FWS), and there are no provisions for QSI's in the FWS.

12-2. Authority

a. Law authorizing WIG's: 5 USC 5335
b. Law authorizing QSI's: 5 USC 5336
c. OPM regulations concerning WIG's: 5 CFR 531.401 to 414
d. OPM regulations concerning QSI's: 5 CFR 531.501 to 508
e. Employee Performance and Communication System: Chapter 2 of NPG 3430.1
f. NASA policy: Criteria for granting QSI's: Chapter 1 of NPG 3530.1:
g. NASA policy: Special pay and allowances: Appendix C to NPG 3451.1

12-3. Delegated authority

Sections 1.2.2.1 and 2 of Chapter 1 of NPG 3530.1 describe who in NASA may recommend and approve WIG's and QSI's. Those sections are reprinted here:

1.2.2.1. Within-Grade Increases (WIG's)

a. The first-level supervisor makes determination of an acceptable or unacceptable rating of record.

b. Reconsideration of an unacceptable rating of record is made one level above those with authority to make the determination.

1.2.2.2. Quality Step Increases (QSI's)

a. Recommendation - officials who report directly to heads of basic organizations (e.g., those who report to the second level below the Center Director or Officials-in-Charge of Headquarters Offices).

b. Approval - one level above those with authority to recommend.

12-4. Within Grade Increases

12-4-1. Summary

Each GS grade is divided into 10 steps, and the difference between each step is 1/9 of the difference between the minimum and the maximum of the rate range for the grade. Thus, the dollar amount of each step is the same. This is true for both regular and special rate ranges (except for tables 999A-F). Note: For grades 1 and 2, the dollar amount of the 10 steps is not equal.

To be awarded a WIG, an employee must: (1) be performing at an acceptable level of competence; (2) complete the required waiting period; and (3) not have received an equivalent increase during the waiting period.

These requirements will be explained further in subsequent sections.

12-4-2. Employee coverage

Employees in the competitive and excepted service who are on regular and special rate scales of GS positions and who are serving on appointments not limited to 1 year or less may earn WIG's regardless of their tour of duty (full-time, part-time, or intermittent). Employees with GM designations also may earn WIG's as explained in Chapter 9.

Example 12a:

Sue is given a term appointment not to exceed 2 years at GS-5 step 1. After 52 weeks, assuming she is performing at an acceptable level of competence, she is entitled to an increase to step 2.

By contrast, Scot is given a temporary appointment NTE 1 year. At the end of that year, the appointment is renewed for a second year. Even though he is working more than 1 year, he is not eligible for a WIG because his actual appointment is still for 1 year or less.

Employees who are given a time-limited promotion of 1 year or less are not eligible for WIG's in that grade. However, as discussed below and in Chapter 3, the time on the temporary promotion would count toward a step increase when they return to their former grade.

Example 12b:

Derrick has been in GS-11 step 1 for 40 weeks. He is given a temporary promotion to GS-12 NTE 6 months. He is not eligible for any sort of WIG at GS-12. However, when he returns to GS-11 after completing his 6 months on the temporary promotion, he will be placed at step 2 because he completed the final 12 weeks of the waiting period. In addition, the time beyond the 12 weeks will be counted toward the waiting period for step 3.

If an employee's time limited promotion is extended beyond 1 year without him/her returning to the lower grade, he/she is eligible for a WIG in the higher grade.

Example 12c:

Donna is a GS-9 step 1 and is given a time-limited promotion to GS-11 step 1 on July 2, 2000 (NTE 6 months). On December 31, 2000, the promotion is extended NTE December 1, 2001. Because now she is serving on a time limited promotion which totals more than 1 year and was never returned to her former grade, she will be eligible for a WIG on July 1, 2001-52 weeks after the initial promotion. Note this is different than for temporary appointments explained in example 12a. This is because a single temporary appointment may not be extended beyond 1 year while time limited promotions can be extended to any length. If the Agency had returned her to her former position and then given her a second time- limited promotion, she would not be eligible for a WIG.

12-4-3. Acceptable Level of Competence (ALOC) Determination

a. Basic requirement

A WIG must be supported by an ALOC determination. ALOC determinations are based on fully successful or better performance ratings of record. Because NASA has a two-level performance system, the second level is sufficient to support a WIG, and as long as all other requirements such as the waiting period are met, the WIG may not be delayed or denied.

b. Delaying ALOC determinations

An ALOC determination must be delayed if:

1) An employee has not been under a performance plan in his/her current position for NASA's minimum performance period (90 days) and
2) Has not received a rating in any position during the last 90 days of the waiting period.

A special rating must be prepared to support the ALOC determination if:

1) An employee has been under a performance plan for the minimum period, but
2) The performance cycle is not completed and therefore,
3) No rating has been issued.

If this situation arises, the specialist responsible for performance management in the Center should be consulted.

Example 12d:

Shane was appointed at GS-9 step 1 on January 2, 2000, but he was not given a performance plan until November 1. Even though he will have completed the 52-week waiting period on December 31, the ALOC determination cannot be made until January 29, 2001, when he has been under the plan for 90 days. At that time a rating must be prepared. If his performance is satisfactory, his WIG will be made retroactive to December 31, the original due date.

Example 12e:

Janet is appointed to a GS-9 step 1 engineering technician position on January 2, 2000. On November 5, 2000, she is reassigned to a GS-9 engineering position; but before she is reassigned, her supervisor from the engineering technician position prepares a performance rating for her. Her WIG can be granted on time because even though she has not been under a performance plan for 90 days in her current engineering position, she received a rating in another position during the final 90 days of her waiting period.

As illustrated in example 12e, if an employee's WIG is delayed, and after the delay, he/she is found to be performing satisfactorily, the WIG is made retroactive to the original due date.

When an employee's WIG is delayed, he/she should be given a notice explaining why it is being delayed, when he/she will be eligible for the WIG, the requirements which

have to be met, and that if performance is satisfactory, the WIG will be retroactive to the original due date.

c. Employees reduced in grade for poor performance

If an employee is reduced in grade for poor performance, the WIG determination is made in the new grade after he/she has been under a performance plan for the minimum period (90 days in NASA). If the WIG would have been due before the employee has been under the plan for 90 days, it is delayed as described above and made retroactive if he/she is found to be performing satisfactorily.

Example 12f:

Wilson is reduced for poor performance from GS-12 to GS-11 step 1 on July 30. Since this reduction does not result in an equivalent increase as explained in section 12-4-6, the time at the GS-12 counts toward his next WIG, which is due on September 10, 2000. Even though he is given a performance plan for his new position immediately (July 31), he will not have been under that plan for 90 days on September 10. He will have been under the plan for 90 days after October 29. At that time a rating should be prepared, and if it is satisfactory, his WIG will be effective on September 10, 2000, the original due date.

d. Waiving the ALOC Determination

The ALOC determination is waived and a WIG is granted if an employee has not served under a performance plan for the 90 day minimum period during the final 52 weeks of the waiting period for one of the following reasons:

1) Because of absences which are creditable service as explained in section 12-4-5 (these would be absences such as military service or being under workers compensation);
2) Because of paid leave such as being on sick leave with a long-term illness;
3) Because the employee has been reinstated retroactively under the Back Pay act (see Chapter 18);
4) Because the employee has been detailed to another Federal agency another employer outside the Federal government such as an entity under the Intergovernmental Personnel Act, and no rating was prepared for the service under the detail;
5) Because an employee has not had time to demonstrate performance under a plan because he/she has been performing activities of official interest to the

Agency but which are not subject to being appraised under the performance regulations (such as serving as a representative for a labor organization); and

6) Because the employee is on long-term training.

12-4-4. Waiting Periods and Effective Dates

Waiting periods for WIG's begin with the first Federal appointment or the last equivalent increase as explained in section 12-4-6. Section 12-4-5 describes which Federal service is creditable. Generally a new waiting period begins if there is in a break in service in excess of 52 calendar weeks. The waiting periods for WIG's are as follows:

52 weeks for steps 2, 3, and 4;
104 weeks for steps 5, 6, and 7;
156 weeks for steps 8, 9, and 10.

Chapter 9 explains waiting periods for employees designated as GM.

The waiting periods are the same for full- and part-time employees.

Example 12g:

Darla is appointed to a GS-6 step 1 position on July 16, 2000, and works a part-time schedule of 20 hours per week. She will be due a WIG to step 2 on July 15, 2001 just like full-time employees.

For intermittent employees waiting periods are based on work days as follows:

260 work days for steps 2, 3, and 4;
520 work days for steps 5, 6, and 7;
780 work days for steps 8, 9, and 10.

It does not matter how many hours an intermittent employee works in a day. It still counts as a day. If an intermittent employee is converted to full- or part-time, the days worked are counted toward completion of the waiting period.

Example 12h:

Madonna was promoted to a GS-5 step 5 intermittent position on January 2, 2001. Between January 2 and July 2, she worked 20 days. On July 2, 2000, she was converted to a full-time position. If not for the 20 days, her WIG to step 6 would be due June 30, 2002, but because she worked 20 days, which equals 4 weeks, her due date is actually June 2, 2002.

WIG's are always effective at the beginning of a pay period, so even if an employee completes the required waiting period in the middle of a pay period, he/she must wait until the next pay period.

Example 12i:

Betty is appointed to a GS-7 step 1 position on July 9, 2000, which is the middle of the pay period. She will complete 52 weeks on July 8, 2001, but because that is also the middle of a pay period, she must wait until July 15, 2001 for her increase to step 2. Even if she had been appointed effective Monday, July 3, as opposed to Sunday, July 2, she would have to wait until July 15.

Once the effective date is reached and the employee has met all the requirements for the WIG, he/she gets the benefits from it even if it was not actually processed because, for example, another action took place on the same date.

Example 12J:

Ingo was A GS-12 step 1 employee and was due a step increase to step 2 on July 16, 2000. He met all the requirements for the increase. On July 16, he accepted a change to a GS-7 step 1 position. If he is repromoted to GS-12, GS-12 step 2 can be used as his HPR, and he can be placed in that step because he met all the requirements for an increase to that step on July 16 and would have received it if not for the simultaneous change to GS-7.

Here's a quick hint for figuring out WIG due dates. For each 52-week period, the actual date will be one day earlier in the succeeding year except for leap years like 2000 where it will be two days earlier.

Example 12k:

In 1999, a pay period began on January 3. 52 weeks from January 3, 1999 is January 2, 2000. Because 2000 is a leap year, 52 weeks from January 2, 2000 will be December 31, 2001.

12-4-5. Creditable Service

a. General rule

Most civilian service including paid leave is creditable toward meeting a waiting period for a WIG, provided that there has not been a break in service in excess of 52 calendar weeks. Service in nonappropriated fund instrumentalities (NAFI) is not creditable for employees coming to NASA. It is creditable for employees going to the Department of Defense or the Coast Guard from their respective NAFI.

b. Leave without pay

Leave without pay (LWOP) is creditable in the following amounts:

2 weeks for going to steps 2, 3, and 4;
4 weeks for going to steps 5, 6, and 7;
6 weeks for going to steps 8, 9, and 10.

LWOP in excess of those amounts during the waiting period extends the waiting period.

Example 12l:

Carmen receives a WIG to step 6 on July 2, 2000. Her increase would be due on June 30, 2002, but between July 2, 2000, and June 30, 2002, she takes 10 weeks of LWOP. 4 weeks of the LWOP is creditable, so her WIG due date is extended by 6 weeks (10 minus 4). Therefore, her WIG will be due 6 weeks from June 30, which is August 11, 2002.

If an employee takes LWOP while on a part-time tour and then returns to a full-time tour, or vice versa, the number of weeks of LWOP to be charged is calculated based on the tour that he/she occupied when the LWOP was taken.

Example 12m:

Michael begins a 52-week waiting period on July 2, 2000, working on a part-time tour of 20 hours per week. Beginning on July 30, 2000, he takes 80 hours of LWOP and returns to work in a full-time tour on August 27. Even though he only actually took 80 hours of LWOP, he is considered to have taken 4 weeks (80 divided by 20) of LWOP and his waiting period will be extended by 2 weeks (4 minus 2). The fact that he returned to a full-time tour is irrelevant.

If he had begun on a full-time tour and had returned to a part-time tour of 20 hours per week after having taken 160 hours of LWOP, for WIG purposes he would have taken 4 weeks (160 divided by 40), and the waiting period would be extended 2 weeks.

c. Service in other than GS positions

Service in positions other than GS positions is creditable from the date of the employee's last equivalent increase (see section 12-4-6).

d. Service creditable for one increase

If after military service, an employee is reinstated to a civilian position by means other than exercising restoration rights, the military service is creditable for one WIG increase no matter how long it lasts, provided that the employee is reemployed in the Federal government within 52 weeks after leaving the military. The 52 weeks may be extended for up to one year if the employee was hospitalized following the military service.

Example 12n:

On January 3, 1999, Barbara is promoted to GS-5 step 1. 6 weeks later, she leaves her agency and enters the military for 18 months. She does not have restoration rights following her military service, but she locates a GS-5 position with another Federal agency 12 weeks after leaving the military. Normally she would be reinstated at GS-5 step 1. However, because her military service is creditable for a WIG, she is placed at step 2. The time in excess of the 52 weeks is not creditable, and she will have to wait 52 weeks for an increase to step 3.

Service on temporary appointments is creditable for one increase provided that there has not been a break in service in excess of 52 weeks.

Example 12o:

Stephen was given a temporary appointment at GS-7 step 1 on January 3, 1999. He worked under the appointment for 6 months and left the Federal government until January 2, 2000 when he was given another temporary appointment at GS-7 step 1 for 8 months. After this appointment was completed, he has another break in service of 3 months but then was given a permanent appointment at GS-7.

Normally his salary would be set at GS-7 step 1, but since he worked more than 52 weeks under the temporary appointments and had no breaks in service in excess of 52 weeks, his salary would be set at step 2 provided that the necessary ALOC determination is made. If the determination cannot be made, it must be delayed and made retroactively as described in section 12-4-3b. The time under the temporary appointments in excess of 52 weeks is dropped, and he must wait 52 weeks before being eligible for an increase to step 3.

If he had been given a permanent appointment at GS-8, that would have been an equivalent increase as explained in section 12-4-6, and none of the previous service would have been creditable.

e. Service creditable for multiple increases

The following types of service are creditable for multiple step increases:

1) Military service when the employee returns through the exercise of restoration rights;
2) Time during which the employee is receiving injury compensation under 5 USC chapter 81;
3) Temporary employment in another Federal Agency which is covered under the General Schedule;
4) An assignment to a nonfederal entity under the Intergovernmental Personnel Act; and
5) Service described in 5 USC 8332(b)(5) and (7) (volunteer service in organizations such as the Peace Corps and VISTA and their successor organizations).

With respect to military service, the entire period from when the employee leaves the Federal agency to the time he/she is restored is creditable.

Example 12p:

Bernie is a GS-11 step 1 employee. His waiting period began on January 16, 2000. On March 1, 2000, he leaves the Agency and enters into the military service on March 15, 2000. He serves in the military until November 15, 2003, and returns to NASA exercising his restoration rights on December 1, 2003.

The period between March 1, 2000, and December 1, 2003, is fully creditable for his WIG even though there were brief periods when he was not actually in the military (March 1 to March 15, 2000 and November 15 to December 1, 2003). Because the service is fully creditable, he would have completed his waiting period for step 2 on January 15, 2001, step 3 on January 14, 2002, and step 4 on January 13, 2003. Therefore, when he returns, he will be placed at step 4. In addition, the time from January 13, 2003, to December 1, 2003, will count toward his waiting period for Step 5.

12-4-6. Equivalent Increases

Whenever a GS employee receives an equivalent increase, he/she must begin a new waiting period. An equivalent increase is equal to the difference between the employee's current step in the grade and the next step. In most cases, this is the same for all steps, but for GS-1 and 2, it is different for various steps. For GM employees an equivalent increase equals the amount of a step in the grade.

If an employee receives several increases during a waiting period, none of which equals an equivalent increase, they are added together; if they total the amount of a step for that grade, the employee is deemed to have received an equivalent increase at the time of the last increase.

Example 12q:

Billy is appointed to a GS-8 step 1 position, $29,315 on January 16, 2000. On March 27, 2000, he accepts a GS-7 position, and his salary is set at step 5 $29,998, for a pay increase of $683. Because each step in GS-7 equals $882, this is not an equivalent increase, and the time from January 16 counts toward completion of his waiting period to step 6.

On September 10, 2000, Billy accepts a GS-6 position, and his salary is set at step 9, $30,172, for a pay increase of $174. This by itself is not an equivalent increase because each step in GS-6 is $794. However, when the $174 is added to the increase of $683 that he received on March 27, the total is $857, which exceeds the amount of each step in GS-6, $794. Therefore, he has received an equivalent increase during the waiting period and must begin a new waiting period on September 10.

For FWS employees coming to the General Schedule, an equivalent increase equals the amount of each step in the FWS grade.

Example 12r:

Linda is in a WG-5 position, and on January 30, 2000, she receives a step increase to step 4, which is an equivalent increase and which for purposes of this example is $10.70 per hour or $22,331 per year. On June 4, she is moved to a GS-5 position. Since her salary falls between GS-5 step 2 ($22,082) and step 3 ($22,794), her salary is step 3. Her pay increase is $463.00, which is less than $712, the amount of each step in GS-5. Therefore, she has not received an equivalent increase. Her last equivalent increase is still the one that she received on January 30 in the FWS position. Therefore, her service from January 30, 2000, is creditable toward her next WIG, and she will be eligible for an increase to step 4 on January 28, 2001.

If on October 22, 2000, she accepts a change to GS-4, and her salary is set at step 7 ($22,922), for a pay increase of $128, she would still not have to begin a new waiting period. This is because $128 plus $463 equals $591, which is less than $637, the amount of each step in GS-4. However, because she is now in step 7, her waiting period is 156 weeks, so she would not be eligible for step 8 until January 26, 2003.

When an employee is promoted, he/she has received an equivalent increase. If an employee receiving retained pay is promoted and receives little or no increase in pay, he/she still has received an equivalent increase and must begin a new waiting period.

Example 12s:

Jodi is a GS-5 employee receiving retained pay of $39,178. She is promoted to GS-11 step 1 ($39,178) on July 16, 2000. Even though she is receiving no pay increase, she has received an equivalent increase for pay purposes, and her waiting period for the increase to step 2 begins on July 16, 2000.

An employee who receives a time-limited promotion has received an equivalent increase for purposes of determining the beginning of a waiting period at the higher grade. If the promotion is converted to permanent without the employee returning to a lower grade, the conversion is not considered a new equivalent increase, and time is counted from the beginning of the time- limited promotion. However, if the employee is returned to a lower grade and then given a permanent promotion, he receives a new equivalent increase, and the waiting period begins with the permanent promotion.

Example 12t:

Joe receives a time-limited promotion on January 2, 2000, to GS-12 step 1. On June 18, 2000, the promotion is converted to permanent. He did not receive an equivalent increase on June 18, so he will be eligible for a WIG to step 2 on December 31, 2000. On the other hand, if he had been returned to a GS-11 position on June 4 and given the permanent promotion on June 18, the repromotion is considered an equivalent increase, and he would not be eligible for a WIG until June 17, 2001.

The following situations do not constitute an equivalent increase even though an employee's pay may increase:

a. General and locality GS pay increases;
b. The increase of an FWS wage schedule;
c. The establishment of new or the increase in existing special rates under 5 USC 5305;
d. A quality step increase; or
e. The return of an employee to the former grade and step from a time- limited promotion (Chapter 3 explains how to set the pay of employees returning from time limited promotions).
f. The return of an employee who fails to complete a supervisory or managerial probationary period to the former grade and step; and
g. A WIG granted as interim relief by an administrative judge of the Merit Systems Protection Board (MSPB) and then terminated because the employee loses the appeal at the full Board level.

Example 12u:

Jake is denied a WIG to step 2. On September 24, 2000, an administrative judge of the MSPB overturns the denial, and orders that he be given interim relief of a WIG to step 2. The Agency petitions for review. On December 17, the full MSPB upholds the Agency's action, and the interim WIG is terminated. Even though he received a WIG on September 24, it is not considered to be an equivalent increase, and he does not have to start a new waiting period on September 24.

An employee reassigned from a regular rate to a special rate position at the same grade and step has not received an equivalent increase even though he/she has received an increase in pay.

Example 12v:

On July 2, 2000, Fran receives a WIG to step 2 of GS-12 in a regular rate position, $48,520. On December 3, 2000, she is reassigned to a GS-12 step 2 special rate engineering position, $50,085. Even though she has received an increase in pay equal to the value of the step in GS-12, she has not received an equivalent increase, and she will be eligible for her WIG to step 3 on the special rate scale on July 1, 2001.

12-4-7. Denials of WIG's

The regulations provide procedures for an agency to follow when it intends to deny a WIG. Essentially these procedures provide for a notice to the employee, an opportunity for the employee to request reconsideration at a higher level, and a right to appeal to the MSPB or file a grievance under a collective bargaining agreement. The basis for the denial will be an unacceptable performance rating. Employee relations staffs should be consulted if a denial case arises.

After a WIG is denied, the WIG can be granted at any time the Agency determines that the employee's performance has improved to an acceptable level and a rating of record has been issued. The WIG would be effective after the ALOC determination has been made. It would not be made retroactive. The Agency must reevaluate the employee's performance at least every 52 weeks after a denial.

12-5. Quality Step Increases (QSI's)

A QSI is a step increase granted to recognize outstanding performance. In NASA it must be supported by a performance rating of "meets expectations" and written documentation explaining the employee's outstanding performance (see appendix C to NPG 3451.1). An employee may be given only one QSI in any 52-week period.

As explained in section 12-4-6, a QSI is not an equivalent increase, so it does not affect the waiting period for an employee's next WIG. However, for employees scheduled to move to steps 4 or 7 in the near future, the QSI would push them into

a longer waiting period. In many cases it would be advantageous to the employee to delay a QSI for a few weeks and let the WIG take effect first.

Example 12w:

Lea is due a WIG to step 4 on July 2, 2000. If on June 18, he were given a QSI to step 4, he would not be due a WIG to step 5 until July 1, 2001. This is because although the time he has served in the step still counts and is not affected by the QSI, he has moved to a 104 instead of a 52-week waiting period.

On the other hand, if the WIG to step 4 is allowed to take effect first, he can be given a QSI to step 5 immediately.

Chapter 13

RELOCATION BONUSES

13-1. Introduction

This chapter explains the purpose and procedures for using relocation bonuses.

Relocation bonuses were one of the flexibilities added by FEPCA. Agencies are permitted to pay bonuses to employees who must relocate to another commuting area to accept a position when it is determined that in the absence of the bonus, difficulty would be encountered in filling the position.

13-2. Authority

a. Law authorizing relocation bonuses: 5 USC 5753
b. OPM regulations concerning relocation bonuses: 5 CFR 575.201 to 575.209
c. NASA policy: Chapter 4 of NPG 3530.1: Recruitment and relocation bonuses

13-3. Coverage

Relocation bonuses may be paid to GS, SES, SL, ST, Law enforcement, and Executive Schedule employees. They may not be paid to FWS employees or the head of an Agency including the NASA Administrator.

Only current Federal employees who will move to another commuting area without a break in service are eligible for relocation bonuses.

13-4. Approval Authority

Centers have the authority to approve the payment of relocation bonuses. However, the Administrator retains the authority to approve them for all SES and ST positions and for positions in his office. Centers wishing to request approval of a bonus for an SES or ST position should submit the request to the Office of Human Resources and Education accompanied by complete documentation which demonstrates that the criteria described in section 13-8 are met.

13-5. Requirement for Prior Approval

Relocation bonuses must be approved before the applicant enters on duty at the new location. Once an individual enters on duty, NASA has no authority to approve a relocation bonus.

13-6. Service Agreements

Before a relocation bonus may be paid, the applicant must sign a service agreement to remain with NASA in the new commuting area for at least 12 months. In the case of a temporary duty assignment of less than 12 months, the service agreement must equal the length of the assignment. (Note: NPG 3530.1 currently requires a minimum agreement of 12 months or the length of a temporary duty assignment. OPM regulations currently do not specify a minimum agreement, but the minimum agreement in NASA is still 12 months.)
Centers may require agreements that are longer than the 12-month minimum.
If an employee is under overlapping service agreements, they will run concurrently.

Example 13a:

Maria is hired at Headquarters on January 1, 2000, and receives a recruitment bonus. She signs a 12-month service agreement. On July 1, 2000, she relocates to JSC and signs a 12-month service agreement because she is receiving a relocation bonus. The service agreements for both the recruitment and relocation bonuses will both be in effect between July 1, 2000, and December 31, 2000. If she were to leave NASA on October 1, 2000, she would have to repay 1/4 of the recruitment bonus and 3/4 of the relocation bonus (see example 13b).

An employee who leaves NASA or the commuting area prior to completing the agreement must repay it on a pro rata basis. Credit is given for each full month worked.

Example 13b:

Carla receives a relocation bonus of $15,000 to relocate to KSC from another Federal Agency and signed a 12-month service agreement. After 6 months, and 17 days she left NASA to go to another Federal Agency. Because she did not complete half of her service agreement, she must repay $7,500, which is half of $15,000. Note: She does not get credit for the excess 17 days because it was not a full month.

An employee who is separated involuntarily not for cause does not have to repay the bonus. This would include a separation for poor performance that does not have a conduct component or a separation by reduction in force. An employee whose position description does not provide for mobility or who has not signed a mobility agreement and who is separated for declining a reassignment to another commuting area would not have to repay the bonus. However, if a mobility requirement is

added after the employee is on duty and the employee accepts one reassignment to another commuting area, the declination of a subsequent reassignment to another commuting area would not relieve the employee of the requirement to repay the pro rata share of the bonus.

If NASA determines that it is necessary to relocate an employee to another commuting area, he/she would not have to repay the bonus.

Example 13c:

Jess is given a relocation bonus to move from Headquarters to Langley, and he signs a 12-month service agreement. 6 months later NASA determines that it is necessary to move him to KSC. Because his relocation was based on NASA's determination, he would not have to repay the bonus even though he was at Langley for only 6 months.

Centers may waive the repayment of a bonus when it is determined that repayment would be against equity or good conscience or not in the public interest. (See NPD 9645.2C.)

Example 13d:

Kevin received a relocation bonus and signed a 1-year service agreement. 6 months later, he had to move outside the commuting area in order that his wife could receive experimental medical care for a life threatening illness. In a case such as this, it might be appropriate to waive the repayment of the pro rata share of the relocation bonus.

13-7. Amount and Payment of Bonuses

Relocation bonuses are paid in a lump sum. They are not part of basic pay for any purpose (although they are taxable as income). They can be up to 25% of basic pay of the position the employee is relocating to, excluding locality pay or special law enforcement adjustments described in Chapter 10. In other words, the bonus is calculated as a percentage of the basic GS pay scale or of a special rate scale. If an employee is on a retained rate, it is calculated as a percentage of the base pay portion of that rate. If an employee is on a part-time schedule, the bonus is calculated as a percentage of the part-time base salary.

Note: For law enforcement officers, a relocation bonus may not exceed $15,000.

Example 13e:

Sarah is being relocated from KSC to ARC at GS-9 step 1. Her salary including locality pay will be $37,240. She is being offered a 25% relocation bonus. Her bonus will be $8,095 or 25% of $32,380, which is the rate for

The bonus may not actually be paid to the employee until he/she has established a residence in the new commuting area.

13-8. Criteria

Each bonus must be approved by a higher-level official than the recommending official except where the Administrator is both the recommending and approving official.

In order to pay a bonus, there must be a written case-by-case determination that in the absence of the bonus, the Center would encounter difficulty in filling the position.

In determining whether a relocation bonus should be paid and in determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

a. The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
b. Recent turnover in similar positions;
c. Labor-market factors that may affect the ability of the Center to recruit candidates for similar positions now or in the future; and
d. Special qualifications needed for the position.

Centers may maintain data for types of positions, so that they do not have to be developed separately for each case. This data can then be used to support individual cases, but the final determination still must be made on a case-by-case basis.

The fact that a position is hard to fill does not by itself automatically mean that a relocation bonus is appropriate. Centers must document that the applicant has the qualifications required for the position and that he/she would not want to relocate without the bonus.

NASA may waive the requirement for case-by-case determinations in two situations:

a. For groups of employees under mobility agreements when it is determined that relocation bonuses are necessary to retain these employees; or
b. When a component of the agency is being moved to another commuting area and it is determined that relocation bonuses are necessary for groups of employees to ensure the continued operation of the unit.

If Centers have situations that meet either of these conditions, they should contact the Office of Human Resources and Education to discuss the matter.

13-9. Documentation

Centers must keep a written record of each determination to pay a relocation bonus. The records should be complete enough to permit reconstruction of the action including:

a. The basis for determining that the position would be difficult to fill without paying the bonus,
b. The qualifications of the applicant, and
c. The basis for determining that the applicant would not have wanted to relocate without the bonus.

Centers should also maintain copies of service agreements, repayments, and waivers. Documentation on each bonus should be retained for 3 years.

Centers will also maintain the following records: Data on the number of employees to whom bonuses are offered, the percentage of salary offered, the number accepted, funds expended, and for all individuals who are offered bonuses, occupations, disciplines, experience, education levels, grade point averages, and educational institutions attended.

Chapter 14

RETENTION ALLOWANCES

14-1. Introduction

This chapter explains the purpose and procedures for using retention allowances.

Retention allowances were one of the flexibilities added by FEPCA. Agencies are permitted to pay allowances to employees if the unusually high or unique qualifications of the employee or a special need of the Agency makes it essential to retain the employee and the Agency determines that the employee would be likely to leave the Federal government in the absence of an allowance.

14-2. Authority

a. Law authorizing retention allowances: 5 USC 5754
b. OPM regulations concerning retention allowances: 5 CFR 575.301 to 575.309
c. NASA policy: Chapter 5 of NPG 3530.1: Retention allowances

14-3. Coverage

Retention allowances may be paid to GS, SES, SL, ST, law enforcement, and Executive Schedule employees. They may not be paid to FWS employees or the head of an Agency including the NASA Administrator.

Only current NASA employees who have completed at least one year of continuing service with NASA or the required service under a service agreement for recruitment or relocation bonus whichever is later may be paid a retention allowance. Once an employee is being paid a retention allowance, he/she may be paid a relocation bonus without affecting the payment of the allowance.

Example 14a:

Barry began employment with NASA at GSFC on January 4, 1999. Normally the earliest he could be paid a retention allowance would be January 4, 2000. However, On December 1, 1999, he relocates to KSC and is paid a relocation bonus. He signs a service agreement to remain at KSC until December 1, 2000. Even after January 4, 2000, he cannot be paid a retention allowance because he is currently under a service agreement. The earliest that he could be paid a retention allowance would be December 1, 2000.

Example 14b:

Barry does not relocate to KSC on December 1, 1999. On February 1, 2000, GSFC begins paying him a retention allowance. On July 1, 2000, he relocates to KSC and is paid a relocation bonus. If KSC determines it to be necessary to retain Barry, it may continue to pay him the retention allowance.

14-4. Approval Authority

Centers have the authority to approve the payment of retention allowances. However, the Administrator retains the authority to approve them for all SES and ST positions and for positions in his office. Centers wishing to request approval of an allowance for an SES or ST position should submit the request to the Office of Human Resources and Education accompanied by complete documentation which demonstrates that the criteria described in section 14-6 are met.

14-5. Amount and Payment of Allowances

Retention allowances are paid each pay period along with the rest of the employee's salary, but they are not part of basic pay for any purpose, although they are taxable as income. They can be up to 25% of basic pay of the employee's position excluding locality pay or special law enforcement adjustments described in Chapter 10. In other words, the allowance is calculated as a percentage of the basic GS pay scale or of a special rate scale. If an employee is receiving a retained rate of pay, it is calculated as a percentage of that rate (25% of the base pay portion). The employee is entitled to receive the allowance for each hour that he/she receives basic pay including paid leave.

Example 14c:

Sarah is a GS-9 step 1 employee at ARC. Her salary including locality pay is $37,240. She is being offered a 25% retention allowance. On an annual basis her allowance would be $8,095 or 25% of $32,380, the rate for GS-9 step 1 of the basic General Schedule without locality pay. Each pay period her allowance will be $310 ($8,095.75 divided by 2087 times 80). She will receive the $310 as part of her paycheck even though it is not considered basic pay for any purpose. If she were on a part-time schedule, 20 hours per week, she would receive the retention allowance only for the hours actually worked, so it would be $155 each pay period.

If Sarah occupied an engineering position with a special rate salary for GS-9 step 1 ($42,091), her allowance on an annual basis would be 25% of $42,091 or $10,522.75. Each pay period, she would receive $403 ($10,522.75 divided by 2087 times 80).

If she were receiving a retained rate of $44,000 (base pay), her retention allowance would be $11,000 (25% of $44,000). Therefore, each pay period of full-time work she would receive $421 ($11,000 divided by 2087 times 80).

14-6. Criteria

14-6-1. Individual Allowances

Each allowance must be approved by a higher-level official than the recommending official except where the Administrator is both the recommending and approving official.

In order to pay an allowance, there must be a written case by case determination that the unusually high or unique qualifications of the employee or a special need of NASA makes it essential to retain the employee and that in the absence of the allowance, the employee is likely to leave the Federal government. It doesn't matter whether the employee would be leaving to go to the private sector or to retire. In either case, an allowance may be paid. Retention allowances may not be paid on the basis that the employee would leave NASA to go to another Federal agency. (Note: On January 19, 2001, OPM proposed regulations that would permit such allowances under limited circumstances.)

For each case there must be a written description of how the employee's departure will affect the Center's ability to carry out an activity or function that is essential to NASA's mission. In determining whether a retention allowance should be paid and determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

a. The success of recent efforts to recruit candidates and retain employees
b. With qualifications similar to those possessed by the employee for positions similar to the position held by the employee;
c. The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee; and
d. The immediate and longer-term effect on a project or program of the employee's departure.

14-6-2. Group Allowances

Centers may approve allowances of up to 10% for groups of employees. The characteristics of the group should be narrowly defined, and everyone who meets those characteristics must be given at least the same allowance. However, there is nothing to prevent a Center from making an individual determination as described in section 14-6-1 to pay an employee in a group a higher allowance than the rest of the group. However, Centers should thoroughly document why an individual should be given a larger allowance than the other group members. Examples of the criteria that Centers may wish to use to identify groups are:

a. Occupational series
b. Grade level
c. Distinctive job duties
d. Unique qualifications
e. Assignment to a special project
f. Minimum Agency service requirements
g. Organization or team designation
h. Geographic location, and
i. Performance level.

Note: The criteria must include the minimum NASA service requirement described in section 14-3. Since NASA currently has a two-level performance system, all members of the group must have a current passing rating.

The decision to pay retention allowances for groups of employees must be made on the basis of a written determination that the category of employees has unusually high or unique qualifications, or that NASA has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category is likely to leave Federal service in the absence of the allowance.

The determination that there is a high risk that a significant number of employees in the targeted category is likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

OPM may approve retention allowances for groups of employees between 10 and 25%. Centers wishing to request group retention allowances of more than 10% should contact the Office of Human Resources and Education. Requests should contain the following information:

a. A description of the group or category and number of employees to be covered by the proposed retention allowance;
b. A written determination that the group or category or employees meets the conditions specified above;
c. The proposed percentage retention allowance payment and a justification for that percentage;
d. The expected duration of retention allowance payments; and
e. Any other information pertinent to the case at hand.

Before submitting requests, Centers should contact other agencies in the area that may have similarly situated employees.

14-7. Adjustment or Termination of Retention Allowances

Centers may reduce or terminate allowances of employees or groups of employees at any time. Chapter 17 explains conditions when allowances must be reduced or terminated because of limitations on aggregate compensation.

The reduction or termination of an allowance is not an adverse action and therefore generally is not appealable. However, it is a personnel action for purposes of the Whistle Blower Protection Act, and therefore, it may be challenged under that law.

14-8. Review Requirement

Centers should review retention allowances periodically to determine whether they should be continued for individual employees or groups of employees. At a minimum, the review must take place annually, and the results of each review must be documented in writing.

14-9. Records

Centers must keep the following records:

a. Data on the number of employees to whom retention allowances are offered, the percentage of salary offered, the number accepted, dates of payments, and funds expended;
b. Information such as occupations, disciplines, experience, and special qualifications of those offered and receiving allowances;
c. Information regarding the mission or program-related factors that necessitate retention of the individual or group, and justify offering retention allowances; and
d. Documentation on the annual review and recertification or termination of the retention allowances for individuals or groups.

Documentation of each determination for an individual or a group retention allowance must be retained for 3 years.

Chapter 15

PHYSICIANS' COMPARABILITY ALLOWANCES

15-1. Introduction

This chapter explains policies and procedures for administering the Physicians' Comparability Allowance (PCA) program.

The PCA program was established in 1978 to aid in the recruitment and retention of physicians by permitting Federal agencies to pay them an allowance that would be in addition to basic pay. Until 2000, the program was authorized for 2 years at a time and required Congressional action to extend it at the end of each period. In 2000, the law was amended to make the program permanent.

15-2. Authority

a. Law authorizing PCA: 5 USC 5948
b. Public Law 106-571: Makes PCA permanent and includes PCA in retirement computation
c. OPM Regulations implementing PCA program: 5 CFR 595
d. NASA Plan to Implement PCA Program, approved by OMB (insert date)

15-3. PCA Plan

Before agencies may pay PCA's, they must develop a PCA plan and submit it to the Office of Management and Budget for approval. NASA's plan for FY 2001 was approved on September 20, 2000. This plan must be renewed each fiscal year.

This chapter supplements and explains NASA's PCA plan but must be read in conjunction with it.

15-4. Purpose

PCA's are paid to physicians in situations where NASA is experiencing recruitment or retention problems. They must be set at the minimum amount necessary to deal with the problems, and they are paid for a set period of time.

15-5. Definition of Physician

A physician is defined as a doctor of medicine, osteopathy or dentistry. For the purpose of consideration for an allowance, a physician must be employed under the General Schedule, Senior Level (SL) Senior Executive Service, or in a position established under 5 USC 5376 or similar authority relating to administratively determined pay for certain scientific and professional personnel (ST). Additionally, an individual is considered employed as a physician only if serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent without those qualifications. A PCA may not be paid to an incumbent of a NASA excepted position authorized under the Space Act.

15-6. Eligibility

An individual on a permanent or time limited appointment of at least 1 year who is employed as a physician (as defined in section 15-5) may qualify for the allowance, except for the following:

a. Those employed on an intermittent basis regardless of how many hours they work;
b. Those employed less than 20 hours per week on a regularly scheduled basis;
c. Interns or residents;
d. Reemployed annuitants based on civilian employment in the federal or District of Columbia civil service; or
e. Those fulfilling an employment obligation incurred as a result of participation in a federally subsidized scholarship program.
f. The allowance normally will not be authorized for retired or recently resigned members of the uniformed services, except as may be approved by the NASA Administrator, (see section 15-10).

NASA employees assigned to other organizations under the Intergovernmental Personnel Act by detail or appointment are not eligible for a PCA. If a NASA employee receiving a PCA goes on an IPA assignment before the PCA agreement expires, the PCA agreement and payments are terminated, but the employee is permitted to retain PCA payments already received. Individuals assigned to a physician position in NASA by appointment under the Intergovernmental Personnel Act may be paid a PCA, but individuals assigned by detail may not be given a PCA.

15-7. Categories

Under NASA's plan PCA may be paid for physicians in any of the following categories:

Category I: Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventative or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers; and similar settings, but not including positions described in Category II below.

Category II: Positions primarily involving the evaluation of physical fitness, the provision of initial treatment of on-the-job illness or injury, or the performance of pre-employment examinations, preventative health screenings or fitness-for-duty examinations.

Category III: Positions not described in Categories I and II above, including positions involving disability evaluation and rating, the performance of medical autopsies, training programs, including the administration of patient care or medical research and experimental programs.

NASA Centers may establish subdivisions of the three categories of positions based on relevant factors. These may include such factors as location, grade or level, medical specialization of the position and the level of qualifications sought for physicians in the category.

15-8. Criteria

Physicians in one of the above categories are eligible for an allowance only if the following conditions are met:

a. There is positive evidence (such as vacant positions, an unacceptably high turnover rate, or significantly higher salaries in the open labor market), indicating the inability to recruit and/or retain physicians in the category to meet staffing needs;
b. The qualification requirements for vacant positions do not exceed the qualifications actually necessary for positions in the category;
c. Efforts have been made to recruit qualified candidates for vacant positions and/or retain physicians presently employed in positions in the category; and
d. An insufficient number of qualified candidates is available to fill the existing vacancies at the basic rate of pay that is offered.

The determination to pay PCA is primarily position based. Thus, unlike an appointment above the minimum or a recruitment bonus (see Chapter 2), once a Center determines that a PCA should be paid for a particular position or group of positions, it is not necessary to determine, for example, that an individual physician would not accept the position unless the PCA is paid. However, all physicians occupying positions for which approval has been granted must be offered a PCA, provided they meet the criteria established by the Center. (The only exception is physicians who have recently retired from the uniformed services as explained in section 15-10.) The amount of the PCA may vary by such factors as grade, board certification, or subspecialization as long as these variations are made part of the initial approval by a Center of categories and subdivisions. ***For example*** for

positions in category 1, a Center could establish the following PCA amounts for physicians with more than 48 months of service:

GS-13 without board certification, $14,000.00
GS-13 with board certification in one applicable specialty, $21,000.00
GS-13 with board certification in more than 1 applicable specialty, $23,000.00
GS-14 without board certification, $15,000.00
GS-14 with board certification in one applicable specialty, $24,000.00
GS-14 with board certification in more than one applicable specialty, $26,000.00
GS-15 without board certification, $16,000.00
GS-15 with board certification in one applicable specialty, $28,000.00
GS-15 with board certification in more than one applicable specialty, 30,000.00

Note, the above example is intended only to illustrate the concept of variations that a Center might approve. The actual subdivisions and amounts must be established based on determinations of what will be necessary to solve the recruitment or retention problem.

15-9. Maximum Amount of Allowance

The amount of the PCA must be the minimum amount required to recruit or retain the physician. However, it may not exceed the maximum amounts authorized by law and NASA's plan. For full time employees these are:

a. $14,000.00 per year for physicians with less than 24 months of Federal civilian service as a physician
b. $24,000.00 per year for physicians with 24 to 48 months of Federal civilian service as a physician
c. $30,000.00 per year for physicians with more than 48 months of Federal civilian Service as a physician

For part-time employees the maximums are prorated. Thus, the maximum for a physician with more than 48 months of service who is working a part time schedule of 30 hours per week would be $22,500.00, which is 3/4 of the $30,000 maximum for full time employees.

When computing prior Federal service as a physician, the service does not have to be continuous. Periods of leave without pay may not be counted, and service in the military may not be counted. Service in the Public Health Service Commissioned Corps and service under Title 38 with the Department of Veterans Affairs or other agencies authorized to use Title 38 may be counted.

Example 15a:

Scot served as a physician in the Navy from January 1, 1992 to January 1, 1995. Upon leaving the navy, he accepted an administrative position with the Department of Veterans Affairs until February 1, 1997, at which time he was reassigned to a position as a physician. However, he immediately went on leave without pay until February 1999. If NASA were to hire him on January 1, 2001, he would have had 23 months in pay status as a physician in a civilian Federal position, so the maximum allowance that could be offered would be $14,000.00. His service in the Navy and his service with DVA before being assigned to a physician position may not be counted. Also, the period of leave without pay may not be counted.

15-10. Approval Authority

Centers have the authority to approve subdivisions and establish PCA amounts for positions that fall into one of the categories described in section 15-7.

Because the PCA program is new in NASA, Centers should provide the Office of Human Resources and Education a copy of approved subdivisions and PCA amounts prior to signing any agreements with individual physicians.

Individual agreements do not have to be provided to the Office of Human Resources and Education.

Centers that approve PCA's must have documentation to support the approval. Documentation must demonstrate clearly how the criteria described in section 15-8 are met. Documentation must contain the information shown in Appendix A to this chapter.

Even where a Center has approved PCA's for particular positions, PCA's normally will not be approved for physicians who have resigned or retired from the uniformed services within the preceding year. Centers wishing to request an exception to this limitation from the Administrator should contact the Office of Human Resources and Education. For an exception to be approved, a Center would have to demonstrate that there is a compelling reason such as the physician is the only qualified candidate for the position or is eminently qualified.

15-11. Agreements

A PCA may not be paid until the Center Director or appropriate Headquarters official and the physician sign an agreement. A sample agreement is contained in Appendix B to this chapter. Centers may modify the sample to meet individual needs, provided that all pertinent information is contained in the agreement.

Payments begin the first full pay period after the agreement is signed by all parties unless a later date is specified in the agreement.

By law, agreements must be at least 1 year. Beyond this minimum requirement there is no set length for agreements, but normally they should not be more than 2 years. However, Centers might find that longer agreements can be useful in some situations. Agreements must always start at the beginning of a pay period and terminate at the end of a pay period.

For purposes of PCA agreements, a year is 26 pay periods.

If a physician becomes eligible for a higher PCA during the life of an agreement because of length of service or other change such as obtaining board certification, a Center has the option but is not required to negotiate a new agreement.

Example 15b:

Ruth had 23 months of Federal Service as a physician and negotiated a 2-year PCA agreement with KSC. Because she had only 23 months of service, the maximum PCA that she could be paid was $14,000.00 per year. After 13 months under the agreement, she will have 36 months of service, and KSC could negotiate a new agreement and pay her a PCA under that new agreement up to $24,000.00 per year.

If during the life of an agreement, a physician becomes eligible for a PCA under a newly announced category, he/she has the option of terminating the current agreement and negotiating a new one under the new category. The expiration date under the new agreement may not be any earlier than the expiration date under the current agreement.

15-12. Termination of Employment

If a physician who is being paid a PCA leaves NASA or is separated for misconduct, he/she will have to repay the PCA as follows:

a. If he/she has completed less than 1 year under the agreement, he/she must repay all the PCA that has been received.

b. If he/she has completed 1 year or more under the agreement, he/she must repay the PCA received during the preceding 26 weeks. As explained above, 1 year equals 26 pay periods.

Even if the physician goes to another Federal agency, he/she is subject to the repayment requirements. If the physician's tour of duty is changed at his/her request to a part-time tour of duty of less than 20 hours per week or intermittent, the physician is subject to repayment requirements unless it is determined that the change is for reasons beyond the employee's control.

If the physician is separated for poor performance without any misconduct, repayment is not required.

A separation by reduction in force does not require repayment.

Center Directors may waive repayment in situations that are determined to be beyond the physician's control, such as hardship or disability. (See NPD 9645.2C.)

15-13. Effect of Position Changes

a. If a physician moves from one position in NASA for which PCA is authorized to a different position for which it is authorized, the agreement is terminated, and a new one must be renegotiated.

b. If a physician moves from a position in NASA for which PCA is authorized to a NASA position for which PCA is not authorized, the PCA agreement is terminated. The physician is entitled to retain the PCA allowance that has been received regardless of whether the position change was initiated by the physician or management. Thus, for example, a physician who is receiving a PCA and is selected under a merit promotion announcement for a position for which there is no PCA will have his/her PCA agreement terminated but will be permitted to retain all allowance payments already received.

c. If a physician receiving PCA moves to a position in another Federal agency for which PCA is authorized, he/she is still subject to the repayment requirements described in section 15-12.

d. A physician receiving a PCA may be detailed to another position in NASA for which PCA is authorized. However, PCA may not be paid to a physician while detailed to a NASA position for which PCA is not authorized or to a position in another Federal agency even if PCA is authorized for that position.

15-14. Reduction in Force (RIF)

As explained in section 15-12, a physician who is separated by RIF is not required to repay any PCA that has been received. This is also true for a physician who resigns or retires after receiving a notice of separation.

If a physician receiving a PCA is moved by RIF procedures to another position for which a higher PCA is authorized, a new agreement with the higher PCA must be negotiated. If he/she is moved to a position for which a lower PCA is authorized, he/she will remain under the existing agreement until its expiration and during that time continue to be paid the higher PCA.

If a physician receiving a PCA is moved by RIF procedures to a position for which no PCA has been authorized, the PCA agreement is terminated, but no repayment is required.

15-15. Payment of the PCA

The PCA is paid each pay period. It is only paid for hours in pay status.

Example 15c:

Nick is receiving a PCA of $13,000.00 per year. Each pay period, he will receive $498.00 ($13,000.00 divided by 2087 times 80).

Note, the PCA amount is rounded off to the next lowest dollar. It should never be rounded up to the next dollar because that could cause the total to go above the maximum allowable PCA. In their agreements, Centers should specify both the annual PCA and the amount for each pay period.

Example 15d:

If in a pay period, Nick had 10 hours of leave without pay, the PCA which he would receive for that pay period would be $13,000.00 divided by 2087 times 70 equals $436.00.

PCA may be paid for part time employees who have a regularly scheduled tour of duty of at least 40 hours per pay period. However, the amount of the PCA is based on the number of hours actually worked.

Example 15e**:**

If Nick were a part-time employee with a regularly scheduled tour of 30 hours per week or 60 hours per pay period, his PCA would be $373.00 ($13,000.00 divided by 2087 time 60). If Nick worked 65 hours during a pay period, his PCA for that pay period would be $404.00 ($13,000 divided by 2087 times 65).

A PCA is not paid to either a full or part-time employee for any pay period during which the number of hours in pay status falls below 40. Pay status includes all paid leave or compensatory time off.

If a physician is subject to a Federal loan repayment program the amount of the loan being repaid will be deducted from the allowance.

15-16. Relation of PCA to Other Pay

The PCA is not basic pay for any purpose except retirement and the Thrift Savings Plan (see section 15-17).

PCA is not considered to be premium pay.

PCA's are subject to the level I cap on total compensation (see section 17-7).

15-17. Use of PCA in Retirement and TSP Computations

On December 28, 2000, Public Law 106-571 made PCA's basic pay for retirement purposes provided that certain conditions are met.

15-17-1. Basic Requirement

In order for PCA to be used when computing an employee's average high 3 salary for retirement purposes, two requirements must be met.

a. At the time of separation, the employee must have had 15 years of civilian service as a Federal physician. This service may have occurred before or after December 28, 2000.

b. The percentage of the PCA that is actually used in the computation is based on the amount of civilian service as a Federal physician that occurred on or after December 28, 2000.

(1) 0 for less than 2 years

(2) 25% for 2 or more years but less than 4 years
(3) 50% for 4 or more years but less than 6 years
(4) 75% for 6 or more years but less than 8 years
(5) 100% for 8 or more years

Example 15f:

Sandy has been a Federal physician since January 1985. She has been receiving a PCA of $20,000.00. She plans to retire January 2002. Even though she meets the 15-year requirement for Federal Service as a physician, she has less than 2 years of service as a physician since December 28, 2000. Therefore, 0% of her PCA may be used when computing her retirement.

If Sandy delays her retirement until January 2003, she would have more than 2 years of service since December 28, 2000. Therefore 25% of her $20,000 PCA ($5,000.00 per year) may be added to her salaries when computing her high 3 average salary.

Note, when doing the actual calculations, you would use 25% of the PCA actually paid each pay period. For example, if during 6 months of the 3 years that make up her high 3, Sandy's PCA were only $16,000, then 25% of that (approximately $2,000.00 -- $16,000.00 X 25% divided by 2, because 6 months is half a year) would be added to her salary during that 6-month period.

15-17-2. Disability and Survivor Annuities

For disability retirement or a survivor annuity based on an employee's death prior to separation, 100% of the PCA would be used to compute the annuity even if the requirements described in 15-17-1 are not met.

15-17-3. Deductions

For pay periods beginning on or after December 28, 2000, retirement deductions are to be calculated based on the full PCA being paid. This is true even if the employee never benefits from the enhanced computation.

Example 15g:

Alfonzo is a CSRS employee and has been a Federal physician for 5 years, and he is being paid a PCA of $20,000.00. Beginning with the first pay period after December 28, 2000, 7% of his PCA will be deducted each pay period (.8%) if he were a FERS

employee). If he retires in 2002, none of his PCA will be considered when computing his retirement even though retirement deductions have been taken from it.

15-17-4. Thrift Savings Plan

Beginning with the first pay period on or after December 28, 2000, the full PCA is to be used when computing Agency and those employee TSP deductions based on a percentage of salary.

15-18. Records

In addition to the documentation described in section 15-10 and Appendix A, Centers must maintain information on the number of allowances paid, the amount of each allowance, and the affect of allowances on recruitment or retention problems.

Appendix A of Chapter 15

National Aeronautics and Space Administration (NASA)
Plan for Implementation of
The Physicians' Comparability Allowance Program

1. Purpose: The purpose of this Plan is to prescribe the NASA policies and procedures for administering the Physician's Comparability Allowance Act of 1978, as amended. This Act provides that certain federally employed physicians may be authorized the payment of an allowance in return for a specified period of service. These allowances are paid only in the case of categories of physicians for which NASA is experiencing a significant recruitment and/or retention problem and are fixed at the minimum amounts necessary to deal with such problems.

2. Definition: A physician is defined as a doctor of medicine, osteopathy or dentistry. For the purpose of consideration for an allowance, a physician must be employed under the General Schedule, Senior Level, Senior Executive Service, or in a position established under 5 USC 5371 or similar authority relating to administratively determined pay for certain scientific and professional personnel. Additionally, an individual is considered employed as a physician only if serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent without those qualifications.

3. Applicability: An individual employed as a physician (as defined in paragraph 2) may quality for the allowance, except for the following:

   a. Those employed on less than half-time (20 hours per week) on a regularly scheduled or intermittent basis;
   b. Interns or residents;
   c. Reemployed annuitants based on civilian employment in the federal or District of Columbia civil service; or
   d. Those fulfilling an employment obligation incurred as a result of participation in a federally subsidized scholarship program.
   e. The allowance normally will not be authorized for retired or recently resigned members of the uniformed services, except as may be approved by the NASA Administrator.

4. Policy:
   a. The allowance may be paid to physicians serving in any of the following categories;

i. Category I: Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventative or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers; and similar settings, but not including positions described in Category II below.

ii. Category II: Positions primarily involving the evaluation of physical fitness, of the provision of initial treatment of on-the-job illness or injury, or the performance of pre-employment examinations, preventative health screenings or fitness-for-duty examinations.

iii. Category III: Positions not described in Categories I and II above, including positions involving disability evaluation and rating, the performance of medical autopsies, training programs, including the administration of patient care or medical research and experimental programs.

iv. NASA may establish additional subdivision of the three categories of positions based on factors the Administrator determines relevant. These may include such factors as location, grade or level, medical specialization of the position and the level of qualifications sought for position in the category.

b. Physicians in one of the above categories are eligible for an allowance only if the following conditions are met:

i. There is positive evidence (such as vacant positions, an unacceptably high turnover rate, or significantly higher salaries in the open labor market), indicating the inability to recruit and/or retain physicians in the category to meet staffing needs;

ii. The qualification requirements for vacant positions do not exceed the qualifications actually necessary for positions in the category;

iii. Efforts have been made to recruit qualified candidates for vacant positions and/or retain physicians presently employed in positions in the category; and

iv. A sufficient number of qualified candidates is not available to fill the existing vacancies at the basic rate of pay that is offered.

c. The amount of the allowance authorized will be the minimum amount necessary to address the recruitment or retention problem for each category and many not exceed:

i. Up to $14,000 per annum if the employee has served as a Government physician for 24 months or less

ii. Up to $24,000 per annum if the employee has served as a Government physician for 24-36 months

iii. Up to $30,000 per annum if the employee has served as a Government physician for more than 48 months.

For the purposes of determining length of service, prior service as a Government physician need not have been continuous, but periods of leave without pay may not be counted. Service in the military is not creditable.

d. Entitlement to the allowance does not accrue during a period that base pay does not accrue.
e. Under applicable law, the allowance is considered basic pay for retirement and the thrift savings plan.
f. The allowance is not considered as basic pay for computing maximum salary limitations, insurance entitlement, or other benefits related to basic pay.

5. Procedures: The NASA Administrator may approve payment of the allowance to individual eligible physicians in any amount that does not exceed the maximum amount established in paragraph 4c of this Plan. Approval will be contingent upon the physician executing an agreement to serve in the position described in the agreement (attachment 1). Under current law, an agreement may not be entered into under this Act later than September 30, 2000, nor shall any agreement cover a period of service extending beyond September 30, 2002. In accordance with Agency policy, the Administrator may delegate this authority to the Center Directors.
   a. The effective date of the agreement will be the date the agreement is signed by the physician, provided the agreement has been otherwise appropriately executed and approved. Payment of the allowance will be effective at the beginning of the first pay period that begins on or after the date of the agreement.
   b. The rate payable for the duration of the agreement will be based on the position in which the physician is serving on the effective date of the agreement.
   c. The allowance will be paid in the same manner and at the same time as basic pay.
   d. The amount paid to a physician employed 20 hours or more per week on a regularly scheduled basis but less than full time (40 hours per week), will be on a pro-rata basis of the amount which would be authorized for a full-time employee in the same position.
   e. If the physician is serving with the government under a loan repayment program, the amount of the loan being repaid will be deducted from any allowance for which the physician is eligible. Any portion of the allowance that exceeds the amount of the loan being repaid may then be paid under regular procedures.
   f. If the physician is covered under more than one comparability allowance category, an agreement may be executed under the more advantageous category.

g. If employment of the physician is terminated during the period of the agreement and such termination is not at the employee's request or as a result of misconduct, the employee will be entitled to retain that portion of the allowance earned to the date of termination.

h. If employment of the physician is terminated voluntarily by the employee due to separation, transfer outside of the NASA, or misconduct, the employee will be required to refund the total amount received under the agreement if they have completed less than one year of the agreement. An employee who has completed one year or more of the agreement will be required to refund the amount of the allowance earned during the 26 weeks prior to termination. The Administrator may grant exceptions to the repayment requirement when it is determined that failure to complete the agreement was necessitated by circumstances beyond the control of the employee.

i. If the physician is serving under an agreement and becomes covered under a newly announced comparability allowance category, the agreement may be terminated and a new agreement executed to reflect the rate authorized under the newly established category. In such cases, the employee shall be entitled to retain that portion of the allowance earned under the terminated allowance.

6. NASA Centers will carefully consider the amount of the allowance to be paid to physicians in each category, taking into account current difficulties in recruiting a qualified physician, and anticipated retention problems that may be experienced in the future. In no instances will the amount be more than the maximum amount allowed under the law.

   Where a separate category based on a subdivision of one of the categories has been established, the maximum allowances will be established to maintain a reasonable relationship to the maximums established for NASA-wide application.

7. The criteria in attachment 2 will be used in evaluating and determining eligibility for allowances. In making these determinations, NASA will insure that allowances are paid fairly, consistently, and equitably, and only when significant recruitment and retention problems for a particular locality exist.

8. Information and reports will be provided as required by the Office of Personnel Management.

9. A copy of this Plan should be made available for review by each physician employed by the National Aeronautics and Space Administration.

Appendix B of Chapter 15

SAMPLE PCA AGREEMENT

Physician's Comparability Allowance Service Agreement

1. **Authority: 5 USC 5948**

2. **Under provisions of the above authority, a Physician's Comparability Allowance is authorized for prospective employment as follows:**

   NASA Center: _____

   Geographic Location: _____

   Position/Title and Grade: _____

   Number of regularly scheduled hours per week if employed less than full time: _____

   Annual Allowance Rate: _____

   Effective Date: _____

   Expiration Date: _____

3. **As a federally employed physician, working for the National Aeronautics and Space Administration, I understand that:**

   a. **As a condition of accepting payment, I will serve with the National Aeronautics and Space Administration as a physician from the effective date through at least the expiration dates of the agreement, unless the agreement is terminated sooner as indicated below.**

   b. **If my employment in the position shown in paragraph 2 is terminated during the period of this agreement at the convenience of the government, but not at my request or as a result of my misconduct, I will be entitled to retain that portion of the allowance earned to the date of termination.**

c. If my employment in the position shown in paragraph 2 is terminated during the period of this agreement at my request, or as a result of my misconduct, I will be required to refund the total amount received under this agreement if I have completed less than one year of the agreement. If I have completed one year or more of the agreement, I will be required to refund the amount of allowance earned during the 26 weeks prior to termination. I further agree that assignment at my request to an intermittent or less than half-time (20 hours per week) work schedule shall be equivalent to termination of this agreement at my request.

d. If, during the period of the agreement, I become eligible for the comparability allowance under a newly announced category, I may terminate this agreement and execute a new agreement reflecting entitlement under the newly announced category, effective on the date of announcement of the newly assigned category. If I exercise this option, I will be entitled to retain that portion of the allowance earned to the date of termination.

e. The allowance will be paid in the same manner and at the same time as my basic pay. It is considered basic pay for computing retirement entitlement, but not for insurance entitlement or other benefits related to basic pay.

f. The effective date of the allowance is the beginning of the first pay period that begins after the effective date of this agreement.

g. The agreement does not in any way commit the government to continue my employment.

4. I agree to the terms and conditions stated above.

_____

_____

Signature of Employee **Date**

Typed name, position title, and grade

Requesting Official

_____
_____

Signature **Date**

Typed name and title

Center Director Approval

_____
_____

Signature **Date**

Administrator Approval
(required for SES, ST, SL, and NASA excepted positions)

_____
_____

Signature **Date**

Revised 1/01

Appendix C to Chapter 15

SAMPLE DOCUMENTATION RECORD

PHYSICIAN'S COMPARABILITY ALLOWANCE PROGRAM
DOCUMENTATION OF RECRUITMENT AND RETENTION PROBLEMS

1. Check the Category of the position:
   Category I
   Category II
   Category III

2. What selection factors, if any, above the minimum required by the GS-602 qualification standard, are used in recruiting for the position?

3. What impact does locale have on the ability to recruit and retain physicians in this category?

4. Are there any required duties that affect the ability to recruit and retain physicians? If so, describe the duties and how they affect the ability to recruit and retain physicians.

5. For the category indicated above, provide the following documentation on recruitment activities:

   a. Number of current physician positions filled and vacant, and the length of time these positions have been vacant:
      Filled _____
      Vacant _____
      Average length of time positions have been vacant _____

b. Physician Losses:
Number of physicians leaving voluntarily during the last year _____
Reasons for leaving

_____

c. Number of positions filled during the last year.
By scholarship obligated physicians _____
By individuals in loan repayment programs _____
By other means _____

d. Describe recruitment efforts (area covered, methods, contact made, etc.).

e. Average number of physician applications that must be screened before qualified candidates can be found _____

f. Average number of qualified physicians referred for each position filled _____

g. Interviews:
1. Of those interviewed for each position, how many are found unacceptable _____

2. What were the reasons for the unacceptability?

h. Rejections:
1. Average number of physicians who reject an offer of employment for each position filled _____
2. What were the reasons for the rejection of offers?

3. Describe your efforts to retain physicians in this category (e.g., changes in working conditions, use of paramedical personnel to assist physicians in routine duties, etc.).

4. How does the turnover rate for physicians in this category (total personnel losses in relation to employment) compare to the total turnover rater for all positions?

   _____

5. If any subdivisions for this category are being established, explain the basis for them.

_____
_____

Signature and Title of Individual Providing Information Date

Chapter 16

SUPERVISORY DIFFERENTIALS

16-1. Introduction

This chapter explains the use and calculation of supervisory differentials, and it also describes procedures for granting, terminating, or adjusting them. This was another flexibility added by FEPCA to compensate supervisors who have subordinates not under the General Schedule whose pay exceeds that of the supervisor.

16-2. Authority

a. Law authorizing supervisory differentials: 5 USC 5755
b. OPM regulations implementing supervisory differentials: 5 CFR 575.401 to 575.407
c. NASA policy: Chapter 3 of NPG 3530.1: Adjusting the Pay of General Schedule Supervisors

16-3. Eligibility

In NASA a supervisory differential may be approved if one or more subordinates who is not under the General Schedule would be paid at least 2% more than the supervisor (without rounding up) in the absence of the differential.

Example 16a:

Howard is a GS-14 step 2 supervisor at GRC earning $73,671.
One of his subordinates not under the General Schedule is earning $75,144, which is $1,473 more than Howard's salary. 2% of Howard's salary is $1,473.42. Thus, his subordinate's salary does not exceed Howard's salary by at least 2%, and Howard may not be paid a supervisory differential.

Subordinates must be civilian employees. Military employees and employees of the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration may not be considered when determining whether the pay of subordinates exceeds the pay of a supervisor. Contract employees also may not be considered.

The supervision exercised must be direct technical supervision.

A supervisory differential may not be paid on the basis of supervision over a subordinate whose rate of basic pay exceeds the maximum rate for GS-15 step 10 for the scale applicable to the supervisor This includes locality pay, law enforcement adjustments, or special rates.

Example 16b:

Tom's subordinate is located in Huntsville, but Tom is a supervisor in Washington, DC. If his subordinate earned more than $110,028, the rate for GS-15 step 10 in the Washington, DC locality pay area, a supervisory differential could not be paid. If Tom were in San Francisco, a supervisory differential could not be paid if the subordinate earned more than $116,042, the maximum rate for San Francisco. The fact that his subordinate is in Huntsville is irrelevant. It is based on the scale applicable to Tom. If Tom were on the medical officer special rate scale, a supervisory differential could not be paid on the basis of a subordinate earning more than the maximum rate for GS-15 step 10 on that scale ($111,245). If Tom were on a special rate scale that did not go up to grade 15, the maximum of the applicable locality pay range would be used as described above.

16-4. Comparing Pay Between the Supervisor and Subordinate

When comparing pay rates between the supervisor and subordinate, include the following payments made to the supervisor:

a. Basic pay, including retained pay;
b. Locality pay, continued rate of pay, or special law enforcement adjustment;
c. Staffing differential (NOTE: currently, OPM has not published regulations to implement this provision of FEPCA);
d. Retention allowance;
e. Annual standby or administratively uncontrollable overtime pay;
f. Availability pay; and
g. Other continuing payments, except do not include Sunday, night, or holiday pay and do not include a hazardous duty differential.

When determining how much the subordinate is being paid, include:

a. Basic pay (except night or environmental differential or a retained rate of pay);
b. Locality pay or law enforcement adjustment (except a continued rate of pay under 5 CFR 531 subpart G (explained in Chapter 6));
c. Other continuing payments(except Sunday or holiday pay or retention allowances); and

d. Annual standby or administratively uncontrollable overtime.

Example 16c:

Teri is a GS-15 step 1 supervisor at KSC earning $82,876 per year. She has a subordinate not under the General Schedule earning $85,000 per year. A supervisory differential may be paid.

If both Teri and the subordinate are given a retention allowance of $10,000, a supervisory differential may not be paid. This is because even though the subordinate still makes more than Teri, the retention allowance is counted when considering Teri's pay but is not counted when considering the subordinate's pay. Therefore, for purposes of determining whether to pay a supervisory differential, Teri now earns $92,876, and the subordinate still earns $85,000.

16-5. Requirement for Higher-Level Approval

All requests for a supervisory differential must be in writing and must be approved in writing by a higher-level official than the requesting official.

16-6. Computation and Payment of Supervisory Differential

A supervisory differential may not cause the supervisor's pay to exceed the pay of the highest paid subordinate by more than 3% when compared as described in section 16-4. As explained in section 16-3, supervisory differentials will only be considered if the subordinate's salary exceeds the supervisor's by 2%.

Putting these two requirements together, supervisory differentials when added to the rest of the supervisor's pay initially will be at least 102% of the supervisor's salary and will not exceed 103% of the subordinate's pay.

Example 16d:

Back to our friend, Teri, earning $82,876 and her subordinate earning $85,000. 3% of $85,000 is $2,550, so Teri may not be paid a supervisory differential which would cause her salary to exceed $87,550 ($85,000 plus $2,550). Thus, the highest supervisory differential that she can be paid is $4,674 per year ($87,550 minus $82,876). 102% of her salary of $82,876 is $84,534, so the minimum supervisory differential that she can be paid in NASA is $1,658 ($84,534 minus $82,876).

A supervisory differential is paid at the same time and in the same manner as basic pay. It is paid at an hourly rate for each hour that the supervisor receives basic pay. Thus, in our example, if Teri were paid the maximum permitted supervisory differential of $4,674, she would be paid it at an hourly rate of $2.24 ($4,674 divided by 2087). Each pay period, she would receive a supervisory differential of $179 ($2.24 times 80). The $179 would be included her paycheck and would not be paid as a separate item.

16-7. Termination and Adjustment of Supervisory Differentials

Centers may terminate a supervisory differential at any time even if the conditions that led to its approval still exist. In other words, even if the subordinate is still earning more than the supervisor, a Center might decide that to save money, it will no longer pay a differential.

If the conditions to justify a supervisory differential no longer exist, the Center must terminate the supervisory differential within 30 calendar days.

There is one exception. The supervisory differential does not have to be terminated where the subordinate's salary no longer exceeds the supervisor's salary by at least 2%. This is because the 2% requirement is a NASA requirement. OPM regulations permit the use of a supervisory differential even if the subordinate's salary exceeds the supervisor's by less than 2%. Therefore, even if the 2% gap is no longer maintained, the differential may continue. However, it must be terminated when the subordinate's salary no longer exceeds the supervisor's salary.

Even if the conditions justifying the supervisory differential still exist, it must be reduced at any time it causes the supervisor's earnings to exceed the earnings of the highest paid subordinate by more than 3%. This also must be done within 30 calendar days.

Example 16e:

Back to our friend Teri. When Teri receives a WIG to step 2, her salary becomes $85,639. Now she is earning more than her subordinate, who is earning $85,000. Therefore, the supervisory differential must be terminated. This is true even though it means that Teri will actually earn less money. She will now earn $85,639 instead of $87,550, which she would have been earning if she had been paid the maximum permissible supervisory differential.

In addition to the adjustments required by the regulations and described above, Centers may adjust the supervisory differential no more than one time in a 12-month period.

Example 16f:

Instead of having been paid the maximum supervisory differential, Teri was paid a supervisory differential which when combined with her salary equaled $85,000. Six months later, it was raised to $86,000. However, it would not be permissible to adjust it again within the same 12-month period. Of course, once her salary increases to step 2 as described in Example 16e, the differential would be terminated.

The reduction or termination of a supervisory differential is not an adverse action, and it generally is not appealable. However, under the Whistle Blower Protection Act an employee has the right to claim that it was a prohibited personnel practice and done, for example, in retaliation for whistle blowing.

16-8. Relation of Supervisory Differential to Basic Pay

The supervisory differential is a discretionary payment and is included when determining whether an employee's compensation will exceed the level I pay cap explained in Chapter 17. A supervisory differential may not be considered basic pay for any purposes.

16-9. Records

Centers must maintain records of all requests for supervisory differentials, actions taken on those requests, terminations, and adjustments. The records must show the basis for each supervisory differential and must show the consideration given to other supervisors in the same organizational unit as the supervisor for whom a differential was approved.

Chapter 17

PAY CAPS

17-1. Introduction

This chapter explains various pay caps including the caps on GS positions, locality pay rates, SES and other high-level positions, premium pay, and the aggregate limit on total compensation. Pay caps shown are those for the year 2001.

17-2. Authority

a. Law, pay cap for GS positions 5 USC 5303
b. Law, pay cap for Locality rates: 5 USC 5304
c. Law, pay cap for special rate positions: 5 USC 5305
d. Law, aggregate limit on compensation: 5 USC 5307
e. Law, pay cap for administratively determined rates: 5 USC 5373
f. Law, pay for critical positions: 5 USC 5377
g. OPM Regulations concerning limits on aggregate compensation: 5 CFR 530.201 to 205
h. OPM Regulations concerning premium pay limitations: 5 CFR 550.105 to 107
i. OPM regulations concerning special procedures for retention allowances: 5 CFR 575.306 and 307

17-3. Level V Cap for the General Schedule

Rates of the basic General Schedule excluding locality pay or special law enforcement adjustments may not exceed Level V of the Executive Schedule. For many years this created serious compression problems wish respect to the basic General Schedule. However, in 2001, the top step of GS-15 is $103,623, and Level V of the Executive Schedule is $117,600. There is a potential problem with respect to special rates. They are also subject to the Level V cap, and of course, they are higher than the basic General Schedule. Currently there is enough room between the top step of the basic General Schedule and Level V to accommodate most special rates that would be approved.

17-4. Locality Pay Caps

The locality pay caps are discussed in Chapter 5. The GS rate plus the locality pay adjustment may not exceed Level IV of the Executive Schedule, which in 2001 is $125,700. The top locality pay is GS-15 step 10 in San Francisco, $121,218, which is far below the pay cap.

Locality pay for members of the SES and others to whom it is extended may not exceed level III of the Executive Schedule, which in 2001 is $133,700. There will be many SES employees whose salary plus locality pay would be much higher than this rate if not for the limitation.

17-5. Caps on Premium Pay

GS employees may not receive salary plus premium pay in excess of GS-15 step 10 in a pay period. The rate used is the employee's base salary plus locality pay or the employee's special rate if one is being paid. Premium pay includes those payments authorized under 5 CFR 550 such as standby pay, administratively uncontrollable overtime, other overtime payments, availability pay, Sunday pay, holiday pay, and night differential pay. If the employee accepts compensatory time in lieu of overtime, it still counts as overtime when calculating the limit.

Example 17a:

Dick is a GS-15 step 8 employee in Cleveland earning $107,324 per year. His biweekly rate is $4,114 ($107,324 divided by 2087 times 80). The biweekly rate for GS-15 step 10 is $4,336 ($113,125 divided by 2087 times 80). The difference between Dick's salary and the maximum is $222 ($4,336 minus $4,114). If overtime were to be approved for Dick, it would be paid at a rate of 1.5 times the rate for the first step of GS-10 step 1, or $28.73 per hour. $222 divided by $28.73 equals approximately 7.7 hours, so Dick could not work more than that amount of compensatory time even though he would not actually be paid the overtime.

In emergency situations Centers may permit an employee to exceed the GS-15 step 10 limitation in a biweekly pay period, provided that it is not exceeded for the calendar year (January 1 through December 31). An emergency is defined as a direct threat to life or property. If an emergency is determined to exist, it must be documented in writing.

Example 17b

In our above example, Dick's agency could decide that an emergency exists and pay him $500 of overtime for several pay periods in a row even though this would put him over the GS-15 maximum for those pay periods. However, Dick could not be paid more than $5,801 of overtime for the whole year because on an annual basis, the difference between his salary and the rate for GS-15 step 10 is $5,801 ($113,125 minus $107,324).

The maximum limitations discussed here do not apply to overtime that the Agency is required to pay under the Fair labor Standards Act (FLSA). NASA must pay all overtime required by FLSA.

Chapter 10 discusses the special maximum rates for law enforcement officers.

17-6. Level IV Cap for Pay Set by Administrative Action

Agencies including NASA often have the authority to set pay for certain positions by administrative action. Senior level positions (SL and ST) and NASA Excepted positions are examples of this situation. In these situations unless otherwise provided, the pay may not be set above level IV of the Executive Schedule, which is $125,700 in 2001. Some agencies have authorities outside of Title 5 to establish positions and set pay. The wording of the specific law will determine whether the Level IV limitation applies. For example, if the law provides that pay may be set without regard to the provisions of Title 5, the Level IV limitation would not apply. Centers should contact the Office of Human Resources and Education if there are questions.

17-7. Level I Aggregate Pay Cap

17-7-1. Basic Requirement

5 USC 5307 provides that the aggregate pay for employees in the executive branch of the Federal government may not exceed Level I of the Executive Schedule, which is $161,200 in 2001. The period of time that is the basis for determining an employee's aggregate pay is the calendar year from January 1 to December 31, regardless of when the employee enters on duty. The limitation concerns money actually received by the employee during the calendar year. Thus, even if the pay period ends before the year is over, the compensation would not be counted if the payday is not until the next year.

17-7-2. Coverage

Unless an exception is provided, the Level I pay cap applies to all employees of the executive branch. It includes the following types of pay:

a. Basic pay
b. Locality pay, continued rates of pay, and law enforcement adjustments
c. Premium pay
d. Performance and incentive awards
e. Recruitment and relocation bonuses
f. Retention allowances
g. Supervisory differentials
h. Post differentials
i. Danger pay
j. Allowances including physicians comparability allowances and environmental allowances for employees stationed outside the continental United States
k. Continuation of pay because of an on the job injury (but not workers compensation payments)
l. Any other compensation similar to the types described above unless specifically excluded

Pay that an employee is entitled to under FLSA is not included. Back pay resulting from an unjustified or unwarranted personnel action, severance pay, and lump sum annual leave payments are not included.

17-7-3. Exceptions

There are exceptions in law to the Level I pay cap. Physicians paid under Title 38 of the United States Code at the Department of Veterans Affairs can be paid up to $200,000 per year. Several other agencies including the Public Health Service, the Defense Department, and the Bureau of Prisons have been given authority to pay some of their physicians under Title 38, and they also have this exception.

As explained in Chapter 2, agencies may request approval through OPM and OMB for authorization to pay an employee above Level I for a critical position. The position involved must be extremely critical to the Agency's mission. Only a very small number of these requests have been approved.

17-7-4. Estimating Annual Compensation

For employees who are being paid high rates of pay, Centers need to review their compensation at the beginning of each year and whenever additional compensation is being contemplated to determine whether the aggregate compensation is likely to exceed Level I for the year. If it appears that it will, there are a variety of actions that the Center must take.

17-7-5. Deferral of Discretionary and Nondiscretionary Payments

In addition to basic pay, there are discretionary and nondiscretionary payments.

Note: For purposes of the aggregate pay limitation, basic pay is only the pay authorized for the position. Unlike when we talk about basic pay for other purposes, ***it does not include locality pay*** and law enforcement adjustments.

Nondiscretionary payments are those payments required by law or regulation that are in addition to basic pay. ***Discretionary payments*** are those payments that an agency is not required to make. Examples of a nondiscretionary payment would be locality pay or a PCA if for example, the Agency already authorized it and signed the agreement. An example of a discretionary payment would be a performance award.

If a Center is contemplating making a discretionary payment and determines that it would cause the employee's compensation for the year to exceed level I when added to the estimated aggregate compensation, the Center **must** defer the discretionary payment to the following year. In other words, the Center can approve the action but then must defer the payment. This is true even if at the time the payment would be made, the employee's compensation would not have yet exceeded Level I. The Center may not defer any nondiscretionary payments to permit the payment of a discretionary payment.

Example 17c:

Rose is an SES employee earning $133,700 including locality pay. She is being paid a PCA of $20,000 per year. In August, the Agency is contemplating giving her a $15,000 award. Even though as of August, she has not yet received more than $161,200 in compensation for the year, it is estimated that she will receive $168,700 by the end of the year if the award is given ($133,700 + $20,000 + $15,000 equals $168,700). Therefore, the Agency may not give her the full $15,000 award at this time. They can give her $7,500, which when added to her salary and PCA would equal $168,700, the Level I pay cap. The remaining $7,500 must be deferred to the following year.

If Rose had been a GS-15 step 9 physician for the first half of the year, earning $108,658, the Center could give her the full $15,000 award because her total compensation would not exceed $161,200. (Half of $108,658 is $54,329, and half of $133,700 is $66,850.) Even assuming that she was being paid the physicians comparability allowance for the whole year, her estimated aggregate compensation

would be $158,179 ($54,329 + $68,850 + $20,000 plus $15,000), which is less than the cap.

It is rare that it is necessary to defer non-discretionary payments, but it can happen, especially in those years with 27 paydays. Unlike discretionary payments, nondiscretionary payments are only deferred at the time they would actually cause the aggregate compensation to exceed the level I cap-not at the time the Agency first estimates that the cap would be exceeded.

Example 17d.

For purposes of our example, Clarence earns $5,400 of salary each pay period plus his PCA, which is $700 per pay period. In a normal year, he would earn $158,600. Because of the 27th payday, his total compensation would be $164,800. If the Agency deferred his physicians comparability allowance earlier than the last pay period, his total compensation could be kept from exceeding the pay cap. However, because the PCA is a non-discretionary payment, the Agency need defer only the allowance that would be paid on the 27th payday because that's the only payday where his actual compensation will exceed the cap.

17-7-6. Special Procedures for Retention Allowances

Although retention allowances are discretionary with the Agency, they are not handled in the same manner as other discretionary payments. An Agency may not authorize a retention allowance if it would cause the estimated aggregate compensation to exceed the cap. Also, if a retention allowance has been authorized and is being paid, the Agency must reduce or eliminate it at the time that an increase in a nondiscretionary payment would cause the estimated aggregate compensation to exceed Level I. Thus, unlike other discretionary payments, retention allowances may not be deferred to the following year. They simply may not be paid in those situations where the cap would be exceeded.

Example 17e:

Merlyn is at SES level 3 at GSFC earning $131,615 per year. She was paid $3,585 in deferred compensation from the previous year, and she is being paid a retention allowance of $1,000 per pay period. The combination of her salary, deferred compensation and retention allowance would place her right at the cap of $161,200. After 13 pay periods, she is reassigned to ARC with a salary of $133,700 because of the higher locality percentage. Through the first 13 pay periods, she earned $65,587 in salary ($131,615 divided by 2087 times 80 times 13), $3,585 in deferred compensation, and $13,000 from her retention allowance for a total of $82,172. During the final 13 pay periods, she would earn $64,882 in salary ($133,700 divided by 2087 times 80 times 13) plus $13,000 from her retention allowance, for a total of $79,626. $82,172 plus $79,626 equals $161,798, which exceeds the cap by $598. Therefore, during the final 13 pay periods, her retention allowance must be reduced by $598. This can be accomplished by reducing it by the entire amount for one pay period or by reducing it by an equal amount of $46 ($598 divided by 13) for each of the 13 pay periods. She may not be paid the $598 as deferred compensation the following year.

17-7-7. Payment of Deferred Compensation

When compensation is deferred, it must be paid in the following year. When the Agency estimates how much of the deferred compensation it can pay, it only considers it and basic pay. The deferred compensation that is paid counts toward the aggregate limitation in the following year.

Example 17f:

Sam has deferred payments of $25,000 from 2000. In 2001, his basic pay will be $122,400, and his nondiscretionary payments will be $20,000. Even though the total of the deferred compensation, the basic pay, and the nondiscretionary payments will exceed the cap of $161,200, the total of just the basic pay and the deferred compensation will not. Therefore, the Agency must pay him the $25,000 in deferred compensation at the beginning of the year.

However, as the year goes on and the nondiscretionary payments cause the cap to be exceeded, those payments must be deferred until 2002.

It is possible that an employee will have compensation deferred every year, but when the employee leaves the Federal government, all the compensation is paid following a separation of at least 30 calendar days. If the employee should return

during the same calendar year, all the deferred compensation that was paid must be counted when determining whether the employee will exceed the pay cap.

Example 17g:

Daisy is paid $25,000 in deferred compensation when she leaves the Federal government in March 2001. When she returns in June, that $25,000 is counted toward her aggregate compensation. On the other hand, if she left in November, so the compensation was paid before December 31, it would not count when she returns to the Federal government on January 15 of the following year.

If an employee transfers to another agency, the agency that owed the deferred compensation is still responsible for paying it.

If an employee dies, all deferred compensation is immediately paid as part of the account settlement process.

17-7-8. 27th Payday Problems

The 27th payday problem has already been mentioned in this chapter. Because different agencies have different paydays, it will be an issue in different years. In years when NASA has 27 paydays, Centers must review the compensation for highly paid employees and take the necessary steps to deal with the 27th payday problem.

OPM officials have been asked about the possibility of either granting some sort of blanket waiver or if this is not possible, seeking legislation to deal with years in which there are 27 paydays. Neither remedy is very likely at this point.

The biggest problem is for employees with retention allowances. As explained above, agencies are required to reduce or eliminate retention allowances as soon as they determine that an employee's nondiscretionary payments will cause compensation to exceed the cap. Obviously with the addition of one more payday, highly-paid employees who are near the cap will go over it, and retention allowances will have to be adjusted. Since employees who are receiving retention allowances are by definition among the Agency's most critical employees, this puts agencies in a difficult situation.

OPM did grant variations in 1996 to some agencies to permit retention allowance payments to be deferred into the following year instead of just being eliminated. However, OPM indicated that one of the reasons it granted the variations was that agencies might have not been aware of the issue until late in the year. Now that the issue has surfaced, OPM may be less sympathetic to Agency claims of lack of knowledge. Centers need to monitor this situation in years when there are 27

paydays. Centers that have problems should contact the Office of Human Resources and education as soon as possible.

Chapter 18

FEDERAL WAGE SYSTEM (FWS)

18-1. Introduction

This chapter explains the structure of the FWS and the basic pay rules that govern it.

18-2. Authority

a. Law establishing the FWS: 5 USC 5341 to 5349
b. OPM regulations for the FWS: 5 CFR Part 532
c. OPM's Operating Manual on the Federal Wage System, formerly FPM Supplement 532-1

18-3. Structure of the Federal Wage System

The FWS is also known as the prevailing rate system. A prevailing rate employee is a person employed in or under an Agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other person, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement.

The three basic pay scales are WG, WL, and WS. WG includes prevailing rate employees who are not wage leaders or wage supervisors. There are 15 WG grades. Each grade has 5 steps. Positions are classified into job families and further divided into series. Grade level progressions vary for the different series. A common progression is WG-5, WG-8, and WG-10. WG-5 would be a helper level, WG-8 would be an intermediate level, and WG-10 would be the journeyman level.

The WL scale includes wage leaders. These employees lead or train 3 or more non-supervisory wage employees, but they do not exercise full supervisory authority.

There are 15 WL grades. Each grade has 5 steps. The WL grade usually corresponds to the highest grade being led, so if the highest grade being led is WG-10, the leader will be a WL-10. The second step of the WL grade is 10% higher than the second step of the corresponding WG grade. For example, if the second step of WG-10 were $10.00 per hour, the second step of WL-10 would be $11.00.

Wage supervisors are full supervisors. There are 19 grades, and each grade has 5 steps. The second step of the 19th grade equals the third step of grade 14 on the

basic GS scale. The second step of grades 1 to 10 is 30% above the second step of the corresponding WG grade. For example, if the second step of WG-10 is $10.00 per hour, the second step of WS-10 will be $13.00. Grades 11 to 19 are set based on a percentage of the difference between the second step for WS-10 and WS-19. The progression is not uniform. For example, WS-11 step 2 equals WS-10 step 2 plus 5% of the difference between WS-10 step 2 and WS-19 step 2. The percentage for WS-12 is 11.5. The percentage for WS-17 is 67.2, and the percentage for WS-18 is 82.8. For example, if WS-10 step 2 equals $15.00, and WS-19 step 2 equals $25.00, the difference is $10. WS-11 step 2 would equal $15 plus $.50 (5% times $10.00) equals $15.50.

Grades of WS positions are based on an OPM supervisory classification guide, which takes into account a variety of supervisory factors.

18-4. Special Pay Schedules

There are a variety of special wage schedules that have been established for different types of positions. A few of the more common schedules are production facilitation, and printing. There also is an apprentice pay scale, which must be developed by the Center as needed (see below).

Production facilitation includes positions such as planner estimators. Nonsupervisory positions are labeled WD, and supervisors are labeled as WN. There are 11 WD and 9 WN grades. Each grade has 5 steps.

Printing scales have been established for printing jobs in some wage areas in the 4400 job family and the 5330 series. Nonsupervisory positions are labeled as XP. Leader positions are XL, and supervisors are XS. There are the same number of grades as for WG, WL, and WS positions respectively. Each grade has 3 steps. Production facilitation printing positions are XD for non-supervisors and XN for supervisors.

Apprentice positions are in formally established training programs. They are labeled as WT. There are no grades. Rather, there are pay levels depending on the length of the apprentice program. Employees normally move to the next level at 26-week intervals, although agencies can advance employees more quickly. The first level equals 65% of the second step of the journeyman grade (or the first step of WG-1, whichever is greater). However, even if WG-1 step 1 is the first level, the intervals are calculated using the 65% rate as the first level.

Example 18a:

The journeyman grade is WG-11 step 2 with a rate of $15.00 per hour. The Agency is establishing a 2.5-year apprentice program. The first level will be 65% of $15.00 ($9.75). The difference between the entry level is $15.00 minus $9.75 ($5.25). The program is 2.5 years long, so there will be 5 intervals of 26 weeks each. The increase for each interval will be $5.25 divided by 5 ($1.05). The intervals will be as follows:

1. $9.75
2. $10.80
3. $11.85
4. $12.90
5. $13.95

If WG-1 step 1 were $10.00, the first interval would be $10.00, but the other intervals would be the same intervals as shown above. When the apprentice program is completed, the employee is promoted to step 2 of the journeyman grade.

18-5. Wage Areas and the Prevailing Rate

The country is divided into over 100 wage areas. A wage area is a geographic area defined by OPM within which a single set of wage schedules is applied uniformly by Federal installations to covered occupations. A wage area can be a metropolitan area, a county or group of counties, or any other geographic area containing a significant number of wage system employees. Occasionally, OPM will abolish or change wage areas, and these changes are published in the Federal Register.

Within each wage area, a lead agency, usually the Department of Defense is responsible for conducting wage surveys to determine what the private sector is paying blue-collar employees. Wage rates for nonsupervisory schedules reflect the general level of rates paid by private employers in the same wage area for kinds and levels of work performed in the Federal service. Based on these surveys, basic wage schedules covering all FWS employees in the wage area are developed. Thus, the Federal Wage system is different than the General Schedule, which has a basic scale plus locality pay. The wage schedules for a particular wage area are the basic rates. There is no national scale.

Full wage surveys are done every 3 years, and an update or “wage change” survey is done for the alternate years when a full survey is not done. When the results of the surveys are completed, new schedules are issued, and agencies are responsible for adjusting the pay of wage system employees. Unlike the General Schedule, changes to wage system pay rates are not all done at the same time. They are effective

throughout the year depending on the timing of the surveys for the particular areas. OPM posts the new wage schedules on their web site.

In theory, there are no limits on how much wage rates can increase. However, during the past several years, Congress has required that increases in pay rates may not exceed the average increases for General Schedule employees.

Wage surveys will determine the prevailing rate for each grade. The prevailing rate is the second step of the WG grade.

In addition to the basic pay schedules, 5 CFR 532.251 authorizes lead agencies with OPM approval to establish special rate schedules for particular occupations or specialties in the entire wage area or in a particular geographic area. The basis for establishing special rates is similar to the reasons for establishing rates in the General Schedule, for example, significantly higher rates in the private sector or the remoteness of the location. These special rate schedules could just have one rate if that's the pattern in the private sector, but in most cases they will have 5 steps and be arranged in the same pattern as the regular pay schedules.

18-6. Steps and Waiting Periods

The amount of each step is based on the second step of the grade. The first step is 96% of the second step. The third, fourth, and fifth steps are 104, 108, and 112% respectively. This is true for WG, WL, and WS positions.

The waiting period to go from the first to the second step is 26 weeks, 78 weeks to go from step 2 to 3, and 104 weeks to go to steps 4 and 5. An employee must have a satisfactory performance rating to move to the next step. Unlike the General Schedule, there are no procedures to process the denial of step increases. If an employee does not have a satisfactory performance rating, the employee does not receive the step increase.

There are no provisions for quality step increases in the FWS.

18-7. Movements between FWS Positions

When an employee moves between FWS positions, the Agency must determine the nature of the action. If the move is within the same pay schedule, e.g. WG, to WG, the nature of action is determined on the basis of the grade levels. A move to a higher grade is a promotion, and a move to the same grade is a reassignment. A move to a lower grade is a change to a lower grade.

Movements between different types of wage schedules are based on representative rates. The representative rate for wage system positions is the second step of the grade. If the position has only one rate, that rate is the representative rate.

A movement to a position with a higher representative rate even by just a penny is a promotion, and a movement to one with a lower representative rate even by just a penny is a change to a lower grade.

> Example 18b:
>
> Mark is a WG-10 employee. He is at step 3 of the grade earning $10.40 per hour. The representative rate for the grade is step 2, $10.00 per hour. If he is moving to a WD position with a representative rate of $10.01, the action is a promotion, but if the representative rate of the WD position were $9.99, the action would be a change to a lower grade.

18-8. Movements Between Wage Areas

When employees move between wage areas, generally they are placed in the same grade and step as they were on in the old wage area. However, if the salary in the new wage area is lower, the Agency can use the highest previous rate rule. As explained in section 17-12, if management initiated the action, the employee could be entitled to retained pay.

18-9. New Appointments

When a wage system employee is given a new appointment, the pay is set at the first step of the grade. If the Agency determines that the employee has exceptional qualifications, the rate may be set at a higher step. Unlike superior qualifications appointments under the General Schedule, agencies do not have to establish that the employee would be forfeiting income to accept the federal position. Thus, Centers may make appointments above the first step if they determine that the individual has exceptional qualifications and the higher step is necessary to recruit the employee.

Sometimes, the lead agency will determine that for certain occupations it is necessary that the pay for new appointments be set above the first step. This would be done to enable the Federal government to compete with the private sector. When the wage schedule is issued, it will indicate those occupations for which new appointments will be paid above the first step. When this is done, all employees in the particular occupation will be paid above the first step.

Agencies may use the highest previous rate rule for wage system employees.

18-10. Highest Previous Rate Rule

The highest previous rate rule (HPR) is generally the same for FWS employees as it is for GS employees, but there are some differences. The HPR should be used when employees move from GS to FWS positions.

OPM's operating manual states that the HPR may not be based on a GS special rate under 5 USC 5305. However, the FWS regulations do not contain this restriction. The introduction to the operating manual states that if the regulations have different requirements from the manual, agencies should follow the regulations. Thus, at this time, in spite of what the operating manual states, Centers may use the dollar amount of a special rate under 5 USC 5305 as the highest previous rate when an employee is moving into a FWS position.

Example 18c:

Elaine is on a GS-6 step 1 special rate position. The regular rate for GS-6 is $23,820, and her special rate is $25,408 ($12.17 per hour. She is moving into a WG 9 position with the following rates: 1-$11.52 per hour, 2-$12.00, 3-$12.48, 4-$12.96, 5-$13.44. Since $12.17 falls between steps 2 and 3, her salary may be set at step 3 of the grade, $12.48 per hour.

If the highest previous rate was earned in a wage system position, it is the grade and step on the same type of wage schedule in the wage area the employee is moving into. If the actual dollar amount of the earned rate is higher, then the earned rate may be used.

Example 18e:

Example 18d:

In 1997, John served for 6 months in a regular rate position at GS-6-4 and then left the Federal government. GS-6 step 4 is his highest previous rate. He is being reinstated to a wage grade position with the same rates as shown in example 18c. In 2000, the rate for GS-6 step 4 is $26,202. The hourly rate is $12.55 ($26,202 divided by 2087). $12.55 per hour falls between steps 3 and 4 of the FWS grade, so his salary may be set at step 4, $12.96 per hour.

Trish was a WG-10 step 2 employee in wage area A, and she earned $11.00 per hour. She is moving to a WG-10 position in wage area B with the following rates for the steps: 1-$10.37, 2-$10.80, 3-$11.23, 4-$11.66, 5-$12.09. Her HPR would be WG-10 step 2 in wage area B. However, since WG-10 step 2 is only $10.80 per hour, application of the highest previous rate rule would permit the Agency to pay her at step 3 ($11.23 per hour) because her salary of $11.00 per hour in the old area falls between steps 2 and 3 in the new area.

Note: The OPM Operating Manual also states that the dollar rate earned on a special rate authorized under 5 CFR 532.251 as explained in section 18-5 may not be used as the highest previous rate. However, as was explained for special rates under 5 USC 5305, the current OPM regulations do not contain this restriction. Therefore, Centers may use the actual dollar amount of a rate earned under a special FWS schedule.

18-11. Promotions

A promotion is a movement from one grade to a higher grade on the same wage scale (for example, WG to WG or WL to WL) or any movement into a wage system position from another pay scale to a position with a higher representative rate).

When an employee is promoted, the employee must receive an increase equal to 4% of the representative rate of the grade from which the employee is moving.

(Note: This rule only applies to promotions ***within*** the FWS. It does not apply, for example, if an employee is moving from a GS to an FWS position. In that case Centers should use the HPR as explained in section 17-10.

Example 18f:

Margie is being moved from a WG-10 step 4 position to a WL-10 position. The pay scales are:

WG-10
1-$9.60 2-$10.00 3-$10.40 4-$10.80 5-$11.20

WL-10
1-$10.56 2-$11.00 3-$11.44 4-$11.88 5-$12.32

Since the representative rate for WL-10 is higher than the representative rate for WG-10, the action is a promotion. When Margie is promoted, she is entitled to an increase equal to 4% of the representative rate for WG-10. The representative rate is $10.00. 4% of $10.00 equals $0.40. Her salary must be at least $10.80 plus $0.40, or $11.20. $11.20 falls between steps 2 and 3 of WL-11, so her salary is WL-11 step 3 ($11.44).

When an employee is promoted between wage areas, the Agency must calculate the salary in two ways:

a. Calculate the promotion in the old wage area and then reassign the employee to the new wage area or
b. Reassign the employee to the new wage area and calculate the promotion in the new wage area.

The employee is paid the higher salary.

Example 18g:

Clark is on a special pay schedule in wage area A with a single rate for his grade. The rate is $10.00. He is being moved to a WG-9 position in wage area B. The steps for the WG positions in wage areas A and B are the following:

Wage area A
1-$9.84 2-$10.25 3-$10.66 4-$11.07 5-$11.48

Wage area B
1-$10.08 2-$10.50 3-$10.92 4-$11.34 5-$11.76

Because Clark is on a one-rate scale, the representative rate is $10.00. The representative rate for the WG position in area B is $10.50, so the action is a promotion. Upon promotion, he must receive an increase at least equal to $0.40. If he is promoted in wage area A, $10.40 falls between steps 2 and 3, so he is entitled to step 3. He would be entitled to step 3 in wage area B, which equals $10.92. If he were first reassigned to wage area B and then promoted, he would still be entitled to the $0.40 increase. $10.40 would fall between steps 1 and 2 in wage area B, so he would be entitled only to step 2.
Since the first calculation yielded the higher salary, the Agency would use that calculation, and he would be entitled to step 3 in wage area B, which equals $10.92.

If application of the 4% rule results in a rate which exceeds the maximum rate of the new grade, the employee would be entitled to either the maximum step of the new grade or the current salary which ever is higher. If the employee's current salary is above the maximum rate of the new grade, the employee receives retained pay.

Example 18h:

Grace is earning $11.00 per hour. Upon promotion, she would be entitled to $11.44. The maximum rate of the grade to which she is being promoted in another wage area is $10.95. Therefore, she will be entitled to a retained rate of $11.00. Under the retained pay regulations, she would then receive 50% of subsequent increases in the rate for the top step of her grade until her retained rate falls within the rate range of the grade at which time she would be placed at the top step of the grade.

17-12. Pay Retention

The rules for retained pay are the same for wage system employees as for GS employees. However, there are a few additional situations under which the employee would be entitled to retained pay.

As explained above, an employee is entitled to retained pay upon promotion if the maximum rate of the new grade is lower than the employee's current salary. Employees are entitled to retained pay if a wage survey results in a reduction in pay. Employees are entitled to retained pay if a management-initiated action causes the employee to have to move to a wage area with a lower rate of pay. If the move were initiated by the employee and not by management, the employee would not be entitled to retained pay, but the Agency could use the highest previous rate rule as explained in section 18-10.

Chapter 19

CORRECTING PAY ERRORS

19-1. Introduction

This chapter explains how to correct pay errors and covers the following topics:

- Obtaining variations to OPM regulations
- Correcting administrative errors
- Waivers of overpayment, and
- Awarding and computation of back pay.

19-2. Authority

a. Whistle Blower Protection Act: 5 USC 1214
b. Law, debt Collection: 5 USC 5514
c. Law, waivers of overpayment: 5 USC 5584
d. Law, back pay: 5 USC 5596
e. Law, time limitation for claims: 31 USC 3702
f. Civil Rights Act of 1991
g. Transfer of waiver authority from GAO to the Executive Branch: Public Law 104-316
h. Authority for OPM to grant variations: Civil Service Rule 5.1
i. OPM regulations concerning back pay: 5 CFR 550.801 to 808
j. OPM regulations concerning debt collection: 5 CFR 550.1101 to 1108
k. NASA Delegation Of Authority - To Waive Claims For Erroneous Payment Of Pay And Allowances, Travel, Transportation, And Relocation Expenses And Allowances: NPD 9645.2c
l. Comptroller General Decision B-191977, August 17, 1979: De facto employment
m. Comptroller General Decisions B-206014, March 7, 1983 and B-215311, December 4, 1984: Settlement of discrimination complaints
n. Comptroller General Decision B-236592, August 23, 1991: Liability of certifying officials

19-3. Variations to OPM Regulations

Section 5.1 of the Civil Service Rules authorizes the Director of OPM to grant variations to the strict letter of regulations when they create unnecessary hardship and practical difficulty. The variation cannot violate the spirit of the regulation and must promote the efficiency of the government and the integrity of the competitive

service. OPM may grant a variation to a regulation but unless specifically authorized to do so may not grant a variation to a statutory requirement.

A variation can be granted to ***correct an error*** or to permit an agency to ***take an action***. If NASA is trying to correct an error, usually OPM will grant a variation only if the Agency can demonstrate there are no other alternatives to regularize the situation. The Agency also must demonstrate that but for a technical violation, it could have taken the action. In other words, the Agency must demonstrate that the criteria for taking the action could have been met. Usually the Agency also must describe the hardship that would exist if the variation is not granted; for example, an employee would have to be terminated.

In other situations, an agency can obtain a variation to take an action. The Agency must demonstrate that the action falls within the spirit of the regulation and that it is important to NASA's mission to have the variation granted. Sometimes, this type of variations leads to changes in the regulations. For example, OPM granted several variations to permit the dollar amount of special rates to be used as the highest previous rate, and eventually the regulations were changed to permit this in certain situations, (see Chapter 3).

When a variation is granted, it becomes a precedent, and OPM is supposed to grant similar variations in similar situations. For this reason, OPM will require more documentation and persuasion in a situation where a variation has never been granted before.

Even though a variation sets a precedent, agencies still must request separate variations for similar cases. In other words, a precedential variation is not an authority for NASA to take an action at variance with the regulations without OPM approval. Centers that feel that they have situations that would support variations should contact the Office of Human Resources and Education. OPM will consider variations only if they come through Agency headquarters.

When the FPM existed, OPM would publish variations in bulletins. Occasionally, OPM now will include information about a variation on its web site under the subject that the variation concerns. The subject matter index on the web site has a topic under the letter v, which has links to variations on various subjects. If the variation is significant, OPM may send a memorandum describing it to agency directors of personnel.

Chapters 2, 5, 13, and 17 describe some of the variations that OPM has granted to pay regulations. OPM has granted variations to permit employees to be given superior qualifications appointments above the first step of their grade after they have entered on duty. In these cases, the agencies were able to demonstrate that they intended to approve the appointments and that the employee accepted the

position with the understanding that the higher step would be approved. The failure to approve the appointment prior to the employee's entrance on duty was an oversight or due to an over-zealous manager who did not obtain the necessary approval from the personnel office. It is important to note that in these cases, OPM's variation was not retroactive, so the employee did not receive the higher step until after the variation was approved.

OPM has approved similar variations when recruitment and relocation bonuses were not approved prior to the employee's entrance on duty or relocation to a new commuting area. As explained in Chapter 17, in 1996, some agencies had 27 paydays, so some employees' pay would have exceeded the Executive Level I pay cap. The regulations would have required that retention allowances be terminated and that the lost money could not be paid in the following year. OPM granted variations to help some agencies deal with this.

19-4. Waivers of Overpayments

5 USC 5584 permits the waiver of overpayments to employees. Before 1996, agencies could waive up to $1,500, but amounts above that could only be waived by the General Accounting Office. Public Law 104-316 transferred the waiver authority to the Office of Management and Budget, which in turn delegated it to agencies. Agencies now have the authority to waive overpayments of any amount. In NASA, Center Directors and the Associate Administrator for Headquarters Operations have the authority to waive overpayments of up to $5,000, and the Deputy Associate Administrator has the authority to waive overpayments in excess of that amount (see NPD 9645.2c).

Waivers can involve pay and other allowances, and since 1988, travel and transportation payments can be waived too.

It is the intention of the law that waivers should be the exception, not the rule. Waivers are to be granted when collection of the money would be against equity and good conscience. In addition, there cannot be any fraud or misrepresentation. Finally, a waiver will not normally be approved if an employee knew or should have known about the overpayment.

Employees are expected to examine their earnings and leave statements, and they are expected to be aware of any unusual increases in salary. Centers may wish to issue periodic reminders to employees that they have the responsibility of reviewing their earnings and leave statements.

An employee who has health insurance and is overpaid because premiums are not being taken out would normally not have a strong case for waiver. A reemployed annuitant whose salary is not being reduced by the amount of the annuity would not

have a strong waiver case because usually agencies and OPM do a good job of informing annuitants about what happens if they are reemployed.

If an employee is in a situation where the pay is constantly changing because of variations in overtime or other premium pay, this employee might have a better chance of demonstrating that he/she reasonably could not have been expected to realize that an increase in salary was improper.

If the employee makes reasonable efforts to correct a problem and the Agency does not fix it, the case for a waiver is less clear. Clearly the employee realized that there was a problem, and this fact would argue against a waiver. On the other hand, if NASA assured the employee that there was no mistake, and it went on for a long time, there would be a strong case that the overpayment should not be collected. If it only went on for a pay period or 2 before the Agency realized that there was a mistake, it would be hard to argue that collection would be against equity or good conscience.

It certainly would be appropriate for a Center to take into account factors such as an employee's grade, education, or length of service. It would be a more significant hardship to collect $500 from a GS-2 employee than it would to collect the same amount from a grade 15 employee. An employee who has been in the Federal government for only a few months and has not finished high school might be less likely to recognize a discrepancy in a paycheck than someone with more education and a lot of service.

One interesting situation occurs when an employee who has been erroneously separated is returned to duty. The employee would have to pay back the lump sum payment for annual leave. Many employees have requested that this be waived. The Comptroller General has said that waivers would be appropriate only to the extent that requiring the repayment would create a debt for the employee. In other words, if the lump sum leave payment is less than what the employee is owed in back pay, a waiver would not be appropriate.

Example 19a:

Cliff owes $9,500 for lump sum annual leave. His back pay equals $7,500 after deductions. It would be appropriate to waive $2,000 of the overpayment, which is the difference between $9,500 and $7,500.

19-5. Relationship of Waivers to Debt Collection Procedures

5 USC 5514 requires agencies to provide employees with due process (such as a hearing) before collecting a debt by salary offset. Usually these debts result from an

overpayment. The debt collection process is usually separate from the waiver of overpayment process. The debt collection process is limited to determining whether in fact the employee incurred the debt and whether the repayment schedule is reasonable. The issues of equity and good conscience normally would not be part of this process. The employee is not entitled to a hearing with respect to a request for a waiver of overpayment.

Even though the two processes are separate, Centers should ensure that there is coordination between staff responsible for them. For example, if an overpayment were going to be waived, there would be no need to spend time and resources on a hearing concerning collection by offset. If as the result of the debt collection hearing, it is determined that the employee does not owe the debt, there obviously no longer would be a need to continue processing a request for a waiver of overpayment.

19-6. De facto Employment Rule

A long line of Comptroller General decisions has explained the de facto employment rule. It provides that if an employee is erroneously appointed or promoted, the employee is entitled to retain compensation earned while in the position. In addition, the employee can retain future benefits such as leave earned while in the position. A rate earned under an erroneous appointment or promotion may not be used as the highest previous rate. Once an Agency determines that a de facto employment situation exists, there is no need for a waiver of overpayment. This is because the employee properly retains the compensation. The de facto employment rule is not a license for an Agency to continue an erroneous appointment or promotion. Once the error is discovered, the Agency must take immediate steps to correct it.

Example 19b:

Paulette is a GS-11 employee and is promoted to GS-12 before having 52 weeks in grade as required by OPM regulations. She is in a de facto employment situation and is permitted to retain the GS-12 compensation. The Agency must either regularize the promotion or get Paulette out of the position. If she now has enough time to meet the GS-11 time in grade requirement, she could remain in the position. Note: As explained below, her de facto service could not be counted as GS-12 service for time in grade purposes, but since she was properly in a GS-11 position, the time could be counted toward meeting the time in grade requirement at GS-11.

Example 19c:

Diane is told that she has been hired into a Federal position. After she works for several weeks, it is determined that the official who told her to report did not have appointing authority and that the action had not been processed by the personnel

office. Diane is in a de facto employment situation. She can be paid for her work, and if she has earned any leave, she can retain that. The Agency must properly effect the appointment or remove her from the position.

When an agency determines that a de facto employment situation exists, the employee's official personnel folder should be documented to indicate that there has been an erroneous appointment but that the employee has been in de facto employment status. The documentation should indicate that the employee can retain compensation and that the employee is to receive service credit. However, the erroneous salary may not be used as a highest previous rate, and OPM has determined that de facto service may not be credited toward meeting time in grade requirements or service required for career tenure. These situations can be very complex, and Centers should contact the Office of Human Resources and Education if questions arise.

The de facto employment rule does not apply where an action has been taken in violation of an absolute statutory bar. In such a situation, an employee would not be entitled to retain compensation already paid and would not be entitled to be paid additional compensation. However, with respect to compensation that was already paid to the individual, the Agency could consider a waiver of overpayment.

Example 19d:

Randy is hired into a position, but it is later determined that he is not a citizen of the United States. The Agency's appropriations act does not permit it to pay non-citizens. This is an absolute statutory bar. Therefore, Randy is not a de facto employee. He would have to repay compensation that he was paid unless the Agency could waive the overpayment. He cannot be paid any additional compensation. Note: NASA has special statutory authority that permits the employment of noncitizens for some positions. Such appointments have special requirements, and must be approved by the Administrator. It may be possible to regularize such an erroneous appointment. Contact the Office of Human Resources and Education.

Example 19e:

Maryanne is hired in violation of the nepotism statute. This is also an absolute statutory bar. Therefore, she would not be permitted to retain compensation unless a waiver of overpayment is obtained, and she may not be paid additional compensation.

Note: In both these situations, a waiver cannot give the Agency authority to pay compensation that had not been paid when the error was discovered. Therefore, there may be some work for which the employees cannot be paid.

19-7. Corrections of Administrative Errors

If a Center makes an administrative or clerical error which results in an employee's pay being set incorrectly, the Center can correct that error. The employee does not have adverse action rights and is not in a de facto employment situation.

Example 19f:

Carmine's step was incorrectly set at 6 instead of 5. He was not entitled to step 6, and the Agency had no discretion to set it at that step. NASA can correct the error and change his step to 5. He is not entitled to adverse action procedures (Warrin V. DoT, MSPB SE07528210135, March 11, 1985). If he received pay at step 6, the Agency can consider a waiver of the overpayment.

On the other hand, if the Agency had the discretion to set Carmine's step at 6 and then later changed its mind, the step could not be reduced unless the Agency gave him adverse action rights, and it would be unlikely that such a reduction in pay would be sustained by a third party.

Example 19g:

A clerk in the personnel office inadvertently keyed Anne's promotion to GS-9 instead of GS-8. Since GS-9 was not authorized, the Agency can correct the action and set Anne's grade at GS-8 without using adverse action procedures. If she received any pay at the GS-9 level, the Agency can consider waiving the overpayment although if the Agency informs Anne of the error immediately, waiver would probably not be appropriate. On the other hand, if Anne is promoted to GS-9, and it is later determined that she does not meet qualification requirements, the Agency would have to use adverse action procedures to demote her. She could retain any compensation earned under the de facto employment rule. The only exception would be if the promotion were done in violation of an absolute statutory bar. In that case, the action could be canceled without using adverse action procedures (Garcia V. Air Force, MSPB NY07528090160, November 2, 1983).

19-8. Back pay

19-8-1. Basic Entitlement

Back pay, interest, and attorney fees are authorized by 5 USC 5596 and 5 CFR 550 subpart H when an appropriate authority determines that an employee has suffered an unjustified or unwarranted personnel action.

19-8-2. Unjustified or Unwarranted Personnel Actions

An unjustified or unwarranted personnel action can be an act of commission or omission that resulted in the denial, withdrawal, or reduction of pay, allowances, differentials, or other benefits. Examples can include: improper removals or suspensions; denial of overtime in violation of a collective bargaining agreement; non-selection; denial of an award or other payment that an appropriate authority determines the employee is entitled to; or denial of a promotion under certain circumstances.

Promotions can be somewhat complicated. At one time, it was simple. Promotions could not be retroactive, and employees could not receive back pay. As the result of a variety of court and Comptroller General decisions, this issue is less clear-cut. If a promotion is denied as the result of prohibited discrimination, the employee can be retroactively promoted and will receive back pay. If an arbitrator or other competent authority determines that an employee is denied a promotion in violation of a collective bargaining agreement, the employee can receive a retroactive promotion and back pay.

If an employee is denied a promotion in violation of a non-discretionary provision of a collective bargaining agreement or Agency policy, the promotion would be retroactive, and the employee would be entitled to back pay.

If there were no non-discretionary Agency policies or collective bargaining provisions, the Agency would have no authority to make a retroactive promotion, where, for example, the action was lost in the personnel office before the appointing officer approved it. On the other hand, if the action were lost after the appointing officer approved it and not keyed in for a few weeks, the employee would be entitled to a retroactive promotion. This is because for back pay purposes, the approval by the appointing officer is considered to be the final discretionary step. At that point the processing of the action becomes non-discretionary.

Example 19h:

Tammy is a member of a bargaining unit whose agreement provides that when an employee meets the requirements for a career ladder promotion, the employee must be promoted by the next pay period. Tammy met the requirements on December 25, 1999, and the next pay period began on January 2, 2000. Because the personnel action was lost, it was not approved, and she was not promoted until February 13. Because there is a non-discretionary policy, she is entitled to be promoted retroactive to January 2. If the bargaining agreement provision did not exist, there would be no authority to give her the retroactive promotion.

If promotion cases arise, Center staffing and labor relations specialists should be consulted to determine the current NASA policies and/or applicable collective bargaining agreement provisions.

If an employee's position is upgraded as the result of a successful classification appeal, the employee is not entitled to a retroactive promotion (United States V. Testan, 424 U.S. 392). On the other hand, if after the classification decision, the Agency fails to effect the decision, the employee would be entitled to a retroactive promotion back to the implementation date required by the decision.

Example 19i:

Victor files a classification appeal on April 1, 1999, to be upgraded to GS-12. On December 1, 1999, OPM issues a decision upgrading his position to GS-12 to be effected no later than January 2, 2000. The Agency does not effect the action until February 27, 2000. Victor is entitled to a promotion retroactive to January 2, 2000.

19-8-3. Requirement to have been ready willing and able to work

To be entitled to back pay, an employee must have been ready, willing, and able to work. This usually comes up when there has been a separation. If the employee was physically incapacitated, the employee would not be entitled to back pay. However, the employee must be given the opportunity to use sick or annual leave if there is leave to the employee's credit and conditions are satisfied for approval. If an incapacitation would not have existed but for the erroneous separation, the employee must be given the back pay regardless of any incapacitation. In one case, an employee was injured on a job with a private sector company that he obtained during the period of erroneous separation. MSPB ruled that he was still entitled to back pay because he would not have been injured if not for the erroneous separation.

If an employee is in jail during a period of separation, the Agency need not pay back pay because the employee could not have worked during that period. Depending on local policy, it may or may not be appropriate to permit the employee to use annual leave during the period of incarceration.

19-8-4. Authority to Award Back Pay

An appropriate authority can award back pay. This includes courts, OPM, MSPB, EEOC, FLRA, the Office of Special Counsel, arbitrators, and NASA officials delegated decision-making authority.

19-8-5. Time Limits for Back Pay

Back pay can result from a variety of administrative or judicial processes such as grievances, MSPB appeals, or complaints of discrimination. Each of these processes has its own time limits. Generally if an employee does not meet a time limit, the case cannot go forward, although there may be situations where a late filing is excused.

There are other claims for back pay that are not tied to any other process. For example, an employee not covered by a collective bargaining agreement could file a claim for standby pay directly with the Agency. In these situations, the time limit is governed by 31 USC 3702. The claim must be filed with the Agency within 6 years of the time when the event giving rise to the claim took place. If the claim is filed late, the Agency has no authority to waive the 6-year time limit. Centers should establish procedures for accepting claims including designating receipt points for claims for back pay. This will avoid disputes concerning whether a claim was filed timely. Once the claim is filed, the clock stops, and the employee may be paid for the entire period beginning 6 years before the date on which the claim was filed until it is decided, regardless of how long the decision process takes.

Some laws have their own filing deadlines. For example, most claims filed under the Fair Labor Standards Act must be filed within 2 years (3 years for willful violations).

Example 19j:

Beginning on January 1, 1992, Holly believes that she should be entitled to annual standby pay, but she does not file a claim with NASA until January 2, 2000. On November 1, 2000, NASA determines that she in fact was entitled to standby pay for the entire period. However, she may only be paid from the period beginning on January 2, 1994 because that is 6 years prior to the date she filed her claim. She may not be paid for the period between January 1, 1992 and January 1, 1994, because that was before the 6-year deadline.

19-9. Settlement Agreements

Agencies may enter into settlement agreements to settle back pay claims or other cases which could result in back pay. At one time there was a question whether agencies could award back pay on the basis of settlement agreements in which the Agency did not admit wrongdoing. The issue has been clearly decided by OPM, GAO, and other third parties. Even without an admission of wrongdoing, a settlement agreement can provide the authority to award back pay.

There are many types and forms of settlement agreements, but for our purposes, it would be useful to divide them into two categories. The first includes those agreements where the Agency is entering into the settlement agreement totally under its own authority. Although a third party may be involved, the third party has no authority to require that anything be in the agreement which is beyond the Agency's authority. This is very important because sometimes third parties will try to get an Agency to agree to something for which there is no authority. If the agreement is challenged, the fact that the third party was involved will be of no help to the Agency.

The other category of agreement includes those agreements where the third party is a party to the agreement and in effect is using the agreement to issue a decision. A common example is an agreement where an MSPB judge is a party to the agreement. If the agreement is entered into the record by the judge, it actually becomes a MSPB decision. Thus, even if it has a provision that the Agency normally would not have the authority to implement, the agreement can be the authority to implement it. The Comptroller General has ruled that once an agreement becomes a final MSPB decision, GAO will not question its propriety. Generally settlement agreements negotiated under the auspices of Federal judges also would provide agencies all the authority they need to implement provisions that otherwise might be questionable. Under recent EEOC regulations, EEOC judges now have the authority

to issue decisions, and therefore, settlement agreements that they approve now can have the force of an EEOC decision.

The above discussion should not be taken as an endorsement of Centers entering into improper agreements. If an agreement is proposed which violates pay laws or regulations, personnel officials should be sure that Agency officials negotiating the agreement, the third party and the appellant are aware of this fact. Centers having questions should contact the Office of Human Resources and Education or the Office of General Counsel. In one case involving a settlement of an EEO case, GAO did find a certifying official liable for funds that he should have known the Agency had no authority to spend.

OPM will not honor settlement agreements that violate retirement and other laws. For example, OPM will not honor an agreement that alters the formula for computing an employee's annuity.

Generally a settlement agreement may not provide an employee more than could have been obtained had the unwarranted or unjustified personnel action not been taken.

Example 19k:

Judy was separated. To settle the case, she asked for $8,000. At the time the agreement was being negotiated, she would have been entitled to only $5,000 of back pay. Therefore, an agreement to give her $8,000 of back pay would have been improper.

Example 19l:

Jerry was demoted for misconduct. To settle the case, he asked for retained pay at the lower grade. It would be improper for an Agency to agree to this request because there is no authority to award retained pay in a case involving misconduct. However, in this real case, the MSPB judge pressured the Agency to sign the agreement, and it was implemented. As a sidelight, the employee continued to be a problem employee, and the Agency was forced to take additional disciplinary actions.

An employee who is awarded back pay is entitled to interest. If an Agency uses the term “back pay” in a settlement agreement, then it will be liable for interest. In one case the agreement had a separate section that said that interest would not be paid. However, when the MSPB enforced the agreement, it said that since back pay normally includes interest, it would interpret the provision concerning interest to

mean that the employee would not receive interest payments beyond what would be required by the Back Pay Act. If a Center does not want to pay interest, the best approach is to agree on a specific sum of money rather than using the term "back pay."

19-10. Compensatory and Consequential Damages

Until a few years ago, life was relatively simple when determining the remedy for an unjustified or unwarranted personnel action. The employee would be entitled to back pay and nothing more. Then the Back Pay Act was amended to provide for interest. The Civil Rights Act of 1991 provided for compensatory damages, and the Whistle Blower Protection Act was amended to provide for consequential damages in some cases.

Under the Civil Rights Act of 1991, an employee who prevails in a discrimination complaint may be awarded ***compensatory damages*** up to $300,000. Compensatory damages can be pecuniary or non-pecuniary. For example, if an employee can demonstrate that the action resulted in additional medical expenses, compensatory damages can include these expenses. If the employee can demonstrate pain and suffering, compensatory damages can be awarded for that.

Compensatory damages are not only applicable to cases under the EEO complaint process. They are applicable in other cases where discrimination is a component, for example, a mixed case in front of the MSPB. They may be awarded as part of a settlement agreement. They are not applicable where the only discrimination alleged is age discrimination.

Consequential damages are damages resulting from the action but which may not be part of back pay. For example, if an employee is separated and has to spend money on a private health insurance plan, the money spent would be consequential damages. In most cases, consequential damages may not be awarded, but in cases involving prohibited personnel practices such as whistle blowing, they may be awarded.

19-11. Attorneys' Fees

The Back Pay Act and other statutes authorize attorney's fees for prevailing parties. They also can be paid as part of settlement agreements. Centers should consult with the Office of General Counsel if the issue of attorney's fees is raised.

19-12. Computation of Back Pay

19-12-1. Gross Back Pay

Once it is determined that an employee is entitled to back pay, the Agency must first determine the gross amount of pay that the employee would have been entitled to if the unjustified or unwarranted personnel action had not taken place. For example, the employee is entitled to receive within grade increases. If the position has annual standby pay, administratively uncontrollable overtime, or availability pay, the employee must be paid that. If the employee regularly worked overtime, the Agency must pay the employee for that overtime. This can be figured either by examining how much overtime the employee was working prior to the action or using the average number of hours that other similarly situated employees worked during the period of the unjustified or unwarranted personnel action.

Example 19m:

Victoria was separated on January 15, 1998. On February 15, 2000, it was determined that the separation was erroneous. Therefore, she was entitled to back pay from January 15, 1998 to February 15, 2000. If she had not been separated, she would have been, due within grade increases on September 7, 1998, and September 8, 1999. These increases must be included in the computation of her back pay. Prior to her separation, she was averaging 3 hours of overtime per week. On January 1, 1999, the division director issued a directive eliminating all overtime for employees in her unit. It would be reasonable for the Agency to include in her back pay 3 hours of overtime per week until January 1, 1999, and not pay any overtime after that date.

If an employee was an intermittent employee, back pay can be determined either by using the average number of hours the employee worked before the erroneous personnel action or using the average number of hours similarly-situated intermittent employees worked.

In addition to back pay, the Agency would be responsible for some other losses suffered by the employee. For example, the Thrift Board has issued regulations that require the Agency to make up for money not earned. This is in addition to the matching contributions that the Agency must make. The Agency also must make other matching contributions such as to the retirement fund and for health and life insurance.

19-12-2. Deductions from Back Pay

Once the gross amount of back pay is determined, the Agency must make deductions from the gross back pay amount.

a. Outside earnings

The first item to be deducted is outside earnings. For this purpose, outside earnings are those that replaced the income that the employee lost because of the unjustified or unwarranted personnel action. Earnings that the employee had before the erroneous separation are not to be deducted.

Example 19n:

Constance had a part-time job of 20 hours per week in a private company before her erroneous separation from the Federal government. She earned $200 per week on this job. This amount is not to be deducted from her back pay.

On the other hand, if she increased her hours to 40 while she was separated from the Federal government and earned $400, the Agency would deduct $200 per week from her back pay award. $200 is the difference between what she was earning before the separation and what she earned after the separation.

If an employee had expenses associated with outside earnings, those expenses must be deducted from the amount by which the back pay is reduced. Taxes that the employee may have paid may not be deducted from the earnings.

Example 19o:

Robert did some consulting during an erroneous separation. He earned a total of $5,000, but he had $1,000 of expenses associated with the consulting work. He also paid $500 in taxes. In this case, $4,000 ($5,000 minus $1,000) would be deducted from his back pay. The $500 of taxes may not be deducted from the outside earnings.

The Court of Claims has ruled that an employee has an obligation to attempt to mitigate damages by trying to find outside work during a period of a separation. In theory, if an employee does not do this, an Agency could deduct wages that the employee could be assumed to have earned from the back pay award. However, in practice, it's very difficult for an Agency to show that an employee did not mitigate damages and to establish how much should properly be deducted. Most agencies do not attempt to apply the mitigation requirement when calculating back pay.

b. Erroneous payments

After deductions for outside earnings are made, the Agency must deduct erroneous payments. These usually occur when an employee has been separated. Erroneous payments are to be deducted in the following order:

1. Annuity payments made to the employee
2. Refund of retirement contributions
3. Severance pay, and
4. Lump sum annual leave payments.

1. Annuity payments. An employee may not receive both back pay and annuity payments, so the Agency must deduct the amount of annuity payments and return them to OPM. However, the Agency does not include in the deduction the amount of health and life insurance payments that OPM deducted from the annuity. OPM will take steps to have these returned from the carriers. The Agency then must deduct the health and life insurance premiums from the actual back pay award.

If taxes have been withheld from the employee's annuity, the amount that the Agency deducts from the back pay award is not reduced by the amount of the taxes. It will be up to the employee to settle with the IRS or state with respect to any refund of taxes.

Example 19p:

Ross was separated and retired. His annuity was $600 per month, and his health and life insurance payments totaled $75. $100 of Federal and state taxes was withheld each month. The Agency must deduct $525 per month ($600 minus $75) from the back pay award and forward that amount to OPM. The Agency does not take into account the $100 per month that was withheld for taxes. The Agency deducts the $75.00 that he paid in life and health insurance premiums from the back pay award and forwards that as it would other health and life insurance premiums. It's a roundabout way, but it must be done this way, so OPM can keep its books straight.

2. Retirement contributions. If the employee obtained a refund of the retirement contributions, the Agency must deduct the amount from the back pay award and forward it to OPM. The employee does not have the option of keeping the refund and just not receiving credit for the service toward retirement.

The employee may request a waiver in order to retain annuity or refund payments that were made to him. The employee must send a waiver request to OPM, not NASA, because only OPM would have the authority to grant the waiver. In most cases a waiver will not be granted unless the employee can show a significant hardship.

3. Severance pay. If an employee received severance pay, the amount of the severance pay must be deducted from the back pay.

4. Lump sum annual leave payment. If the employee received a lump sum payment, the amount of that payment must be deducted from the back pay. The employee does not have the option of keeping the money and not having the leave credited.

It might be appropriate to waive the deduction of severance pay and/or the lump sum leave payment only to the extent that the deductions would put the employee in debt. NASA has the authority to make this determination (see section 19-4).

Example 19q:

Vince is entitled to $7,000 of back pay. The severance pay and lump sum leave payment received by him totaled $8,000. If the Agency waives any amount, it would be appropriate only to waive $1,000, the amount by which the total of the lump sum payment and severance pay exceeded the back pay.

d. Employee benefits contributions

The Agency must deduct retirement contributions (including social security, as applicable) from the full amount of the employee's back pay that would be subject to retirement contributions.

Example 19r:

Glenda was entitled to $10,300 of back pay. $10,000 of the award was regular salary, and $300 was overtime. She earned $1,000 from outside employment obtained during the separation. She is covered by the CSRS. NASA would be required to deduct $700 from the back pay award. (This assumes a CSRS rate of 7% during the period of back pay. For several years that rate has been slightly higher, and the higher rate would be used if in effect during the period of back pay). Because $300 was for overtime and retirement deductions are not calculated on overtime, this amount is subtracted from the $10,300. Even though the $1,000 will be deducted from Glenda's eventual back pay award, it is not deducted when calculating her retirement contributions.

Note: As explained above, NASA is required to pay the matching contributions to the retirement fund, but they have no affect on the back pay award.

The Agency is required to deduct health insurance contributions from the back pay award if the coverage continued. The employee has the option of canceling coverage during the period, but the employee should confer with the Center's benefit's specialist to determine what effect cancellation will have on future entitlements.

Life insurance deductions are not made unless death or accidental dismemberment occurred between the removal and the back pay award in which case deductions are made.

e. Unemployment compensation

If an employee received unemployment compensation during the separation, NASA must advise the state that paid the compensation that the employee is not entitled to the compensation. It will be up to the state to decide whether to collect the money from the employee. Some states do not collect it.

f. Taxes

NASA is required to withhold taxes from the gross amount of back pay minus the earnings from outside income. This may result in the employee having more taxes withheld than he/she owes, but it is up to the employee to obtain any refunds to which he/she may be entitled.

19-13. Restoration of Annual Leave

Because the lump sum annual leave payment is deducted from the employee's back pay award, the annual leave must be restored to the employee. Often this results in the employee having more than the maximum carryover. A separate leave account must be established for the excess leave. If a full-time employee has 416 or fewer hours beyond the maximum, the employee must use that leave by the end of the second full leave year following the year in which the leave is restored. For every 208 hours or portion thereof beyond 416, the employee has an additional year to use that leave. For part-time employees, the cutoff for the first 2 years is leave equal to or less than 20% of the employee's tour, and it's 10% for each year after that.

Example 19s:

On March 1, 1998, David was returned to duty, and he had 870 hours of annual leave restored to him. His maximum carryover is 240 hours. The amount in excess of 240 is 630. He must use 416 hours by the end of the year, 2000. He must use the next 208 by the end of the year 2001, and he must use the remaining 6 by the end of the year 2002.

Example 19t:

Dorothy is a part-time employee with a tour of duty of 20 hours per week. She is restored to duty on March 1, 1998. She has 500 hours of leave restored. Her maximum carryover is 240. She has excess leave of 260 hours. 20% of her annual hours is 208. She must use 208 hours by the end of the year 2000 and 52 hours by the end of 2001.

19-14. Computation of Interest

For actions that became final on or after December 22, 1987, employees are entitled to be paid interest. Interest is calculated on the gross amount of back pay minus outside earnings. The interest is computed beginning on the first day the employee would be entitled to the payment. Usually this would be a payday. It is compounded using rates that are adjusted each quarter by the Department of Treasury. OPM usually puts a list of rates on its web site.

Agencies must issue interest payments within 30 days of the date on which the accrual of interest ends. Another way of saying this is that the Agency can stop calculating interest as of 30 days before the payment is made. For example, If the payment is made on March 31, interest accrual would stop on March 1; but if the payment is delayed, the Agency must recalculate the interest. When interest is calculated, it is compounded. In most situations, the payroll office will calculate the interest, and Centers do not have to make these calculations.

In 1988, OPM issued Federal Personnel Manual Letter 550-78, which explained how to compute interest. Although the FPM has been eliminated, the instructions contained in this letter are still accurate and may be helpful.

Chapter 20

SEVERANCE PAY

20-1. Introduction

This chapter explains severance pay and discusses the following topics:

- Employee eligibility
- Actions covered
- Reasonable offers
- Computing severance pay
- Creditable service
- Pay rate to use
- The severance pay fund
- Life time limits on receipt of severance pay
- Suspension and termination, and
- Records

20-2. Authority

a. Law authorizing severance pay: 5 USC 5595
b. OPM regulations concerning severance pay: 5 CFR 550.701 to 713

20-3. Employee Eligibility

To be eligible for severance pay, an employee must be serving under an appointment without time limitation on a full or part-time tour of duty. Employees serving on a time limited appointment which follows an appointment without time limitation with a break in service of 3 calendar days or less are also eligible for severance pay, provided that they are still on a full or part-time tour of duty. Intermittent employees are not eligible for severance pay.

Example 20a:

Gwen is a full-time permanent employee, and on December 31, she leaves her position to accept a full-time temporary appointment on January 1. Potentially, she still is eligible for severance pay. (Section 20-4 explains the conditions under which a separation following a move from a permanent to a temporary appointment is an action that would entitle her to severance pay.)

Example 20b:

John is a full-time permanent employee, and on December 31, he leaves his position to accept a permanent intermittent appointment on January 1. John no longer would be eligible for severance pay because he is not on a regularly scheduled tour of duty. The fact that there was no break in service is irrelevant.

Employees who meet the eligibility requirements described above can be in the competitive service, the excepted service, or the SES. Other qualifying appointments include status quo appointments, overseas limited appointments without time limitation, and time limited appointments in the Foreign Service when the employee was assigned under an authority that included a reemployment right in the same agency but the right has expired.

NOTE: There are some appointments that are not time limited but are not qualifying for severance pay. These include Presidential appointments, non-career SES appointments, Schedule C appointments, and appointments at all levels of the Executive Schedule.

If an employee were appointed to an agency that is scheduled for termination within 1 year of the date of the appointment, the employee would not be eligible for severance pay. However, if by the date of separation, the agency has been extended beyond 1 year from the date of the employee's appointment, the employee would be eligible for severance pay. Also, if the appointment was made with a break in service of 3 calendar days or less following an appointment that did qualify the employee for severance pay, the employee would be eligible for severance pay.

To be eligible for severance pay, an employee must have at least 12 months of continuous service immediately prior to separation. Continuous service means service in civilian positions with no breaks in service of more than 3 calendar days. Time limited appointments that preceded the permanent appointment from which the employee is being separated are counted toward the 12-month requirement. If the employee had any breaks in service during which severance pay was received, those periods are credited. Periods of time during which the employee received continuation of pay or workers compensation also are credited.

Example 20c:

On June 1, 1999, Sharon receives a temporary appointment that is converted to a permanent appointment on January 1, 2000. On February 1, she is injured on the job. After receiving 45 days of continuation of pay, she is out of work receiving workers compensation until October 1, 2000, when she returns to work. On December 1, 2000, she is separated by reduction in force. She meets the 12-month requirement because her temporary service beginning on June 1, 1999, can be credited, and all the time while she was receiving continuation of pay and workers compensation also is credited.

An employee who is receiving injury compensation is not eligible for severance pay unless the compensation was being received concurrently with pay or is the result of another individual's death.

Employees who are receiving or are eligible for an immediate annuity from the military at the time of separation are not eligible for severance pay. An immediate annuity is one that begins within 1 month of separation.

Employees who are receiving or are eligible for an immediate Federal civilian annuity at the time of separation are not eligible for severance pay. An immediate annuity is one that begins within 1 month of separation. It includes optional retirement, voluntary early retirement, and discontinued service retirement.

FERS employees may elect to defer an annuity under the provision known as the minimum retirement age (MRA) plus 10. Employees who have at least 10 years of service and are at least 55 are eligible for an annuity. (Note: Beginning in 2003, the minimum age will go up 2 months each year until it reaches 57.) Because the annuity is significantly reduced for every year the employee is under age 62, many employees elect to defer this annuity. However, because the employee is eligible for it, deferral does not change the fact that the employee is not eligible for severance pay.

The FERS MRA plus 10 is contrasted to the traditional deferred annuity. The deferred annuity is the one which employees with at least 5 years of service become eligible for when they turn 62. This annuity does not disqualify an employee from receiving severance pay even if they are receiving severance pay when the annuity begins.

Example 20d:

Florence will turn 62 on October 1, 2000. She has 18 years of service and is separated by RIF on July 1, 2000. She is entitled to 52 weeks of severance pay. On October 1, 2000, she will begin receiving her deferred annuity and will continue receiving severance pay until July 1, 2001. If she had been under FERS, she would not have been eligible for severance pay because she would have qualified for the MRA plus 10 annuity. If she had been separated on September 15, for example, she would not have been eligible for severance pay even under CSRS because her annuity would have begun within less than a month from the date of her separation.

If following separation, an employee who is otherwise not eligible for an annuity applies for and is granted disability retirement, the employee would forfeit entitlement to severance pay. This is because disability annuities are retroactive to the date of separation. The employee would be required to repay any severance pay already received.

20-4. Actions Covered

To be eligible for severance pay, an employee must be involuntarily separated other than for misconduct or inefficiency. Inefficiency would include a separation for poor performance under parts 432 or 752 of the regulations. However, if a separation is caused by an employee's inability to perform because of a medical condition beyond his/her control and the employee is not eligible for disability retirement, he/she would be eligible for severance pay. Separation by RIF and separation for refusing to accept a reassignment or transfer of function to another commuting area are involuntary separations and entitle eligible employees to severance pay.

If an employee signed a mobility agreement upon entrance into the current position or the position description contained a mobility requirement at the time the employee entered into the position, the employee would not be eligible for severance pay based on declining a reassignment to another commuting area. On the other hand, if the mobility condition were imposed after the employee was in the position, the employee would be entitled to severance pay. If after the mobility condition was imposed, the employee accepts a move to another commuting area, the employee is not eligible for severance pay for failing to accept a subsequent move.

Example 20e:

Grant is an investigator in Washington, DC. Following his entrance into the position, he was required to sign a mobility agreement. Six months later, he is given a directed reassignment to KSC. If he were to decline that reassignment, he would be entitled to severance pay. However, if he accepts the reassignment to KSC and a year later, he is given another reassignment to JSC, he would not be eligible for severance pay if he declines the reassignment to JSC.

If a reassignment would not require an employee to relocate, the employee would not be eligible for severance pay even if the positions were in different commuting areas.

Example 20f:

Gloria lives in Baltimore Maryland, but she works in Washington, DC. Her agency directs her reassignment to a position in Baltimore. Even though Washington, DC and Baltimore are considered separate commuting areas, she would not be eligible for severance pay if she declines the reassignment. This is because the reassignment would not cause her to have to move. On the other hand, if she lived in Washington, DC, she would be entitled to severance pay because a reassignment from Washington, DC to Baltimore can be assumed to necessitate her relocation.

Generally resignations are considered to be voluntary actions and not actions entitling an employee to severance pay. However, if an employee resigns after receiving a RIF separation notice or a RIF demotion notice that is not a reasonable offer, the employee would be entitled to severance pay. The RIF demotion notice must make it clear that the employee will be separated if the lower graded position is not accepted. If the RIF separation notice is canceled before the effective date of the resignation or the RIF demotion notice is modified to give the employee a reasonable offer, the employee would no longer be entitled to severance pay. This must be explained to the employee, and the employee must be given an opportunity to withdraw the resignation.

If employees receive a general notice clearly stating that all positions in a competitive area will be abolished or transferred to another commuting area, they could resign and would be entitled to severance pay if otherwise eligible.

If an employee receives a directed reassignment to another commuting area and resigns, the employee if otherwise eligible would be entitled to severance pay if the reassignment notice contains an effective date for the reassignment and makes it

clear that the Agency intends to separate the employee for failure to accept the reassignment. This can be somewhat tricky because the separation would have to be effected under adverse action procedures. If the reassignment notice states, "If you do not accept this reassignment, action will be initiated to separate you under part 752 of the regulations", this should be sufficient to grant severance pay if the employee resigns and clearly indicates that the resignation is based on the decision not to accept the reassignment.

See 20-9 for a discussion of time-limited appointments.

20-5. Affect of Reasonable Offers on Entitlement to Severance Pay

If an employee declines a reasonable offer, the employee loses eligibility for severance pay. A reasonable offer must be:

a. In writing
b. In the employee's agency or one to which the employee's function is transferred
c. In the commuting area unless the employee is under a mobility agreement
d. To a position for which the employee meets established qualification requirements
e. To a position with the same tenure and work schedule as the employee's current position, and
f. Not lower than two grades below the employee's current position without regard to retained grade

If the Agency has waived qualifications to make the offer, the employee is considered to meet qualifications, and the offer is reasonable.

In some situations, a permanent employee's RIF rights are satisfied by the offer of a time-limited position. In such a case, the employee retains the permanent status while in the time-limited position, and the RIF rights are applied again when the appointment expires. Nevertheless, the offer is not to a position of the same tenure, and it is not a reasonable offer for purposes of denying severance pay.

Retained grade has no effect when determining whether an offer is two grades lower than the employee's grade.

Example 20g:

Chad is in a grade 13 position on a retained grade of 15. He is offered a grade 12 position. Even though this position is 3 grades below his retained grade, it is only 1 grade below his actual grade. Therefore, it is a reasonable offer.

The fact that an employee will receive retained grade has no effect on determining whether an offer is reasonable.

Example 20h:

Gladys is a GS-12 employee being offered a grade 9 position with a retained grade of GS-12. Because the offered position is 3 grades below her current position, it is not a reasonable offer.

When comparing offers between pay systems, the Agency must use representative rates.

Example 20i:

Mickey is a GS-7 employee. He is offered a wage grade position. The rate for the second step of the wage grade is $11.40 per hour. The second step is the representative rate for wage grade positions. $11.40 times 2087 equals $23,792. The representative rate for GS-5, which is two grades below GS-7, is $23,506. The representative rate is the 4th step on the basic General Schedule or applicable special rate scale exclusive of locality pay. Since the offered position has a higher representative rate than GS-5, the offer is reasonable.

20-6. Computing Severance Pay

The computation of severance pay is based on creditable service and an age adjustment factor.

For each year of service up to 10, an employee is paid one week of severance pay, and for every year after that, the employee receives 2 weeks. For each 3 months beyond a whole year, the employee receives 1/4 of a week in the first 10 years and 1/2 of a week beyond 10 years. For every 3 months that the employee is over 40 years old, the number of weeks is increased by 2.5%.

Determinations concerning the amount of service and the employee's age are made as of the separation date.

Example 20j:

Ellen will have 20 years and 5 months of service on the effective date of her separation. She will be 42 years and 7 months old. The number of weeks of severance pay will be calculated as follows:

a. 1 week for each of the first 10 years of service: 10 weeks
b. 2 weeks for each of the next 10 years: 20 weeks
c. 1/4 times 2 weeks for the 3 months beyond 20 years (nothing for the extra 2 months): .5 weeks
d. The sum of a through c is 30.5 weeks.
e. Because she is 2 years and 7 months beyond 40, she gets an age adjustment of 25% (10% for each of the full years; 2.5% for each of the three months over 40, and nothing for the extra month).
f. 25% of 30.5 = 7.625
g. The number of weeks of severance pay which she will receive is 7.625 + 30.5 = 38.125

Note: OPM has issued regulations requiring agencies to give employees in RIF notices estimates of their severance pay. Centers should make it clear that the information is an estimate. Agencies need to be as accurate as possible. If an employee were, for example, to resign on the basis of an estimate which was way off, it is likely that a third party would find that the resignation was not a voluntary action. The Agency could be required to cancel the resignation and return the employee to the rolls with back pay.

20-7. Creditable Service

Civilian service is creditable for severance pay. In addition, service with the Postal Service and Postal Rate Commission is creditable. Military service occurring before civilian service is not creditable. Military service that interrupts civilian service is creditable if the employee returns to civilian service through an exercise of a restoration right. Nonappropriated fund service performed for the Defense Department or the Coast Guard is creditable for employees who move to the civil service of the Defense Department or the Coast Guard respectively without a break of more than 3 calendar days, but it is not creditable for employees in NASA.

20-8. Pay Rate to Use

An employee's severance pay is based on the pay rate received at the time of separation. This includes locality pay, special law enforcement adjustment factors continued rates of pay, stand by pay, and availability pay. It also includes night shift differential pay for wage system employees but not for GS employees. It does not include other additional pay such as administratively uncontrollable overtime and retention allowances. If an employee is in a non-pay status, the severance pay is based on the rate of pay that the employee normally would receive. If the employee is on a part-time tour, the rate of pay is the pay that the employee actually is receiving.

Example 20k:

Garry is entitled to 30 weeks of severance pay. The weekly rate for his grade and step is $600, but because he has a part-time schedule of 20 hours per week, he will receive 30 weeks of severance pay at $300 per week. This is true even if he had been a full-time employee and only recently changed to part time. Conversely, if he had been working part-time and changed to full-time, he would receive the 30 weeks of severance pay at a rate of $600 per week. Contrast this situation to the situation explained below where an employee is on a mixed tour of duty with a specified number of full and part-time weeks.

20-9. Time-limited Appointments

If a permanent employee accepts a ***temporary appointment without a break in service*** of more than 3 calendar days, the employee generally will be entitled to severance pay when the temporary appointment expires, provided he/she is otherwise eligible to receive severance pay. This is true even if the employee voluntarily accepts the temporary appointment, and is not restricted to cases involving a RIF action. This seems to go against common sense because an employee is permitted to voluntarily leave a permanent job, accept a temporary position, and then get the severance pay when the temporary appointment expires as intended. However, the courts and GAO have mandated this result (see Musser, B- 213346, March 1986) and it is now reflected in OPM's regulations. The agency currently employing the employee is responsible for payment of severance pay upon separation from the time-limited appointment, even though the entitlement may have originated in another agency.

On the other hand, a permanent employee who accepts a temporary appointment without a break in service of more than 3 calendar days and ***resigns*** prior to the expiration of the temporary appointment forfeits the entitlement to severance pay. Centers should ask employees in these situations to sign a statement indicating that he/she understands the resignation is voluntary and that it results in the forfeiture of severance pay.

Any severance pay entitlement that an employee may have based on an involuntary separation from a permanent appointment is immediately terminated (not suspended) when the employee receives a qualifying temporary appointment. (See 5 CFR 550.711.) Severance pay for an employee in a qualifying temporary appointment is triggered by the involuntary separation from that appointment (including expiration of the appointment as provided in the definition of "involuntary separation" in 5 CFR 550.703) and is computed using the rate of basic pay at the time of separation from that temporary job. (See 5 CFR 550.709(b).) Thus, the agency employing the individual in a time-limited job is liable for any severance payments.

In contrast, if a temporary appointment is not qualifying for severance pay because the employee is hired 4 or more days after involuntary separation from a qualifying permanent appointment, the severance pay liability rests with the agency in which the employee had a permanent appointment. Severance payments by that agency are merely suspended during the temporary appointment.

If an employee moves from a permanent appointment to a time-limited appointment without a break of more than 3 days, the employee's severance pay will be based on the rate earned under the time limited appointment and is recalculated to include service under the temporary appointment. Note: This is a change from the way it was at one time. At one time the regulations provided that the rate would be based on what the employee earned under the permanent appointment. There are many old CG decisions that state this. Because the regulation has been changed, those decisions should not be followed.

A mixed tour is a situation where an employee works a specified number of pay periods on a full-time schedule and the other pay periods on a part-time schedule. In such a case, the Agency must review the employee's work history for the past 26 biweekly pay periods and compute an average to determine the rate to be used for severance pay.

Example 20l:

Dawn is on a mixed tour. She works 26 weeks on a full-time schedule and 26 weeks on a part-time schedule of 20 hours per week. The weekly rate for her grade and step is $500. She is entitled to 40 weeks of severance pay. To compute the rate, multiply 26 weeks time 1 to represent the full-time weeks plus 26 times .5 or 13 to represent the part-time weeks, for a result of 39. Divide 39 by 52 weeks (.75). In other words, on the average she has a tour of duty equal to .75 of a full-time tour. Her severance pay weekly rate will be .75 times 500 equals $375. She will receive 40 weeks of severance pay at the rate of $375 per week.

Sometimes an employee is in a position in which the standby duty varies. The Agency again must compute the average for the previous 26 biweekly pay periods. If prior to separation, the employee is moved to a position that has no standby duty, the standby duty is not included in the calculation of the pay rate.

Example 20m:

Don's standby premium pay regularly varies. His basic rate of pay is $1,000 per week. For the 26 pay periods preceding his RIF separation, he works the following: 13 weeks with 25% standby pay, 13 weeks with 10% standby pay, and 26 weeks with no standby pay. He is entitled to 20 weeks of severance pay.

To compute his rate, multiply ($1,250 X 13) + ($1,100 X 13) + ($1,000 X 26). Divide the result by 52 ($1,087.50). Therefore, he will receive 20 weeks of severance pay at $1,087.50 per week. $1,250 is derived from his rate of $1,000 plus the 25% standby pay, and the $1,100 is derived from $1,000 plus his 10% standby pay.

If prior to separation, he were reassigned to a position that had no standby duty and had a pay rate of $1,000 per week, his severance pay would be paid at the rate of $1,000 per week.

Often wage system employees are required to rotate between the night and day shifts. When this is the case, compute the average rate.

Example 20n:

Sonya works 26 weeks on the night shift and 26 weeks on the day shift. Her basic rate is $10.00 per hour, and her night shift rate is $11.00 per hour. These equal weekly rates of $400 and $440 respectively. Since she works half the year at each rate, her rate will be $420 per week. If she is entitled to 15 weeks of severance pay, she will receive 15 weeks at the rate of $420 per week.

The computations described above should be used only when there are regular variations. By contrast, if an employee who has been working on the day shift is moved to the night shift a few weeks before a RIF, and it was the Agency's intention that this move was to be permanent, the full night shift rate should be used as the employee's rate, not the average. It would be irrelevant that the employee worked much of the previous year on the day shift.

if an employee is on a time-limited promotion at the time of separation, the employee will be paid severance pay at the rate earned on the promotion. On the other hand, if the Agency terminates the promotion prior to the effective date of the separation, the employee will be paid severance pay at the lower rate of the permanent position.

It is up to Centers how to handle this issue. Centers should establish a uniform policy for a particular RIF. It may be desirable not to terminate time-limited promotions as a way of providing the maximum assistance to employees. On the other hand, if the Center is having budget problems, it may need the money that the termination of time-limited promotions would save.

20-10. Severance Pay Fund and Lifetime Limits

The severance pay fund is the total that the employee is entitled to based on any one action. It may not exceed 52 weeks.

There is also a life time limit of 52 weeks for each employee. Thus if an employee earned 20 weeks of severance pay at an earlier time, the employee now can earn only 32 weeks regardless of what the calculation otherwise would yield. The employee's severance pay is calculated in the usual way, and then the number of weeks previously earned is subtracted.

Example 20o:

After Andy had 6 years of service, he was separated by RIF and was paid 6 weeks of severance pay.

He has returned to the Federal government and has worked an additional 10 years, for a total of 16 years of service. Unfortunately he must be separated again. He is under 40. His basic severance pay calculation results in 22 weeks: 10 weeks for the first 10 years of service and 12 weeks for the next 6 years. However, because he already was paid 6 weeks of severance pay at an earlier time, he can be paid only 16 weeks of severance pay (22 minus 6).

He again returns to work for the Federal government. He works 8 more years but is separated by RIF again. By this time he is 49 years old. He would be entitled to 1 week of severance pay for each of the first 10 years of service, and 2 weeks for each of the next 14 years for a total of 38 weeks. Because he is 49 years old, he has an age adjustment factor of 90%. 90% of 38 equals 4.2, so the total is 72.2. However, the maximum severance pay is 52 weeks. Since he already has been paid 22 weeks of severance pay, he would be entitled to only 30 weeks (52 minus 22).

If he were reemployed, he could not receive any more severance pay because he has received 52 weeks in his life.

20-11. Payment of Severance pay

Severance pay is paid at the same intervals which the employee received salary. Taxes, Medicare, and FICA are deducted. FICA is deducted only for those employees for whom it was being deducted when they were employed, so it would not be deducted for employees who were under the Civil Service Retirement System (except for offset employees).

The last payment may be a partial payment if, for example, the employee was entitled to 50.5 weeks of severance pay.

20-12. Suspension and Termination of Severance Pay upon Reemployment

Severance pay terminates when an employee returns to the Federal government (including the Postal Service) under a qualifying appointment, which generally would be a permanent appointment with a full or part-time tour of duty. It does not matter whether the appointment is equivalent to what the employee previously occupied or whether it's at a lower grade. Severance pay is not reinstated if the employee leaves the position. If the separation from the new position creates a new entitlement to

severance pay, it is calculated based on the factors in effect at that time with the subtraction for previously paid severance pay as explained above.

If an employee who is being paid severance pay accepts a time-limited appointment with a break of more than 3 calendar days, severance pay is suspended and resumed at the same rate when the time-limited appointment is terminated. If there was a relatively short period between the separation and the time-limited appointment, so that no payments had been made, they are not made until after the time-limited appointment is over.

Centers need to be careful about offering a temporary appointment to a separated employee with a break in service of 3 days or less because a new severance pay entitlement may result from the termination of the temporary appointment. OPM has ruled that the Center would be responsible for the full amount of severance pay even if the original separation were at another Agency. This is unfortunate and may result in fewer placement offers.

Example 20p:

Art is separated by RIF from HUD on October 31. He is entitled to 40 weeks of severance pay. On November 1, NASA Headquarters gives him a temporary appointment. When that appointment expires, there would be a new entitlement to severance pay. NASA Headquarters would have to compute his severance pay upon separation from the temporary appointment and would be responsible for all of it. If NASA waited until November 5 to effect Art's temporary appointment, the severance pay that HUD is required to pay would be suspended because there would be a break of more than 3 days. When Art's temporary appointment was completed, HUD would resume paying the severance pay. One problem for Art would be that because there was a break of more than 3 days, benefits such as health insurance would not continue.

If an individual dies while receiving severance pay, severance pay continues being paid to the survivors. However, if the individual dies prior to separation, there is no severance pay. This is true even if a separation notice had been issued, and it is because the entitlement to severance pay is based on the separation.

20-13. Improper Uses of Severance Pay

Centers need to be careful that severance pay is not misused. There have been cases where agencies and employees have developed sweetheart deals. For example, an agency abolished an employee's position and with the agreement of the employee did not review the employee's RIF rights. Rather, the Agency simply issued a notice separating the employee by RIF. It was later found that the

employee would have been entitled to a reasonable offer. The employee was required to return the severance pay, and disciplinary actions were taken against the personnel officials who took the action. Remember, unlike discontinued service retirement, mere abolishment of a position does not establish an entitlement to severance pay.

20-14. Relation of Severance Pay to Buyouts

To date, buyout authorities at NASA have been either $25,000 or an amount equal to an employee's severance pay projected severance pap entitlement, whichever is less. The calculation of the severance pay is done regardless of whether the employee is actually eligible for severance pay or whether the employee previously had received severance pay.

An employee cannot receive both a buyout and severance pay. An employee must voluntarily retire or resign to receive a buyout, and such a voluntary action would not entitle an employee to severance pay.

20-15. Records

For each fiscal year, Centers must keep records of the number of employees who receive severance pay and the total amount of severance pay paid. Also, when work is contracted out, Centers must keep track of the number of employees who go to work for the contractors within 90 days. This is actually a remnant from previous regulations. At one time, employees who went to work for contractors within 90 days were not eligible for severance pay, but that restriction was eliminated. However, OPM still requires agencies to keep this information.

Appendix I

LIST OF ACRONYMS

AD	Administratively Determined
CFR	Code of Federal Regulations
CG	Comptroller General
FEPCA	Federal Employees Pay Comparability Act
FWS	Federal Wage System
GAO	Government Accounting Office
GS	General Schedule
HPR	Highest Previous Rate
IGA	Interim Geographic Adjustment
LEO	Law Enforcement Officer
MPR	Maximum Payable Rate
MSPB	Merit Systems Protection Board
NEX	NASA Excepted
NPD	NASA Policy Document
NPG	NASA Procedures and Guidelines
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PCA	Physicians' Comparability Allowance
PMRS	Performance Management and Recognition System
QSI	Quality Step Increase
RIF	Reduction in Force
RUS	Rest of United States
SES	Senior Executive Service
SL	Senior Level
ST	Senior Scientific and Professional
USC	United States Code
WG	Wage Grade
WIG	Within-Grade Increase
WL	Wage Leader
WS	Wage Supervisor

Appendix II

QUICK PAY-SETTING REFERENCE GUIDE

	Lateral	Promotion	Change to Lower Grade
GS → GS	Match step on base chart; set $; add LP (same grade/pay on new LP chart)	2 step rule on base pay chart; add LP	Match to lowest step on base chart which matches or exceeds current base $; add LP
GM → GS	To GM in same agency: same step/psn in pay range; remains GM. Transfer, or reass. to non-GM: same step or next higher if between; no longer GM.	Same as above; employee no longer GM (includes temporary promotion)	Same as above; employee no longer GM
SSR → SSR*	Match step on SSR chart	2 step rule on SSR chart	Match to lowest step on SSR chart which matches or exceeds current $
GS → SSR*	Match step on SSR chart	2 step rule on base chart; match step on SSR chart	Find lowest step on base chart which matches or exceeds current $; match step on SSR chart
SSR → GS	Match current step on SSR to step on GS chart; add LP (see NOTE below on HPR)	Add 2 steps on SSR chart; set to lowest step of higher grade on base chart which matches or exceeds $; add LP	Use current step to determine MPR in lower grade on base (non-SSR) chart. Exception: Involuntary CLG, not for cause: using $ on SSR chart for current step, determine MPR on base chart for lower grade.
WG, WL, or WS (Prevailing rates)	(Same grade on same schedule, regardless of area) Match grade/step on new chart. If lower rate, HPR or pay retention (see 5 CFR 536.104(5))	(To higher grade of same schedule, or schedule w/higher RR, e.g., WG to WS) add 4% of rep. rate of current grade.	(To lower grade of same schedule, or to schedule w/lower RR, e.g., WS to WG) HPR or pay retention (See 5 CFR 536.104(5))
WG/WL/WS → GS/SSR	In ALL cases, set pay on base pay chart or SSR chart using HPR. Compare RR's to determine nature of action (if greater $, promotion, etc).		
GS/SSR → prevailing rates (WG/WL/WS)	(Same RR) Match base rate/SSR to prevailing rate chart: HPR	(To schedule w/higher RR) add 4% of RR of current grade & schedule (base or SSR)	(To schedule w/lower RR) HPR, matching base/SSR to prevailing rate chart

*After finding result, give greater of LP or SSR.

NOTE: Generally, may apply HPR on promotion, reassignment, change to lower grade, conversion or reinstatement. See special rules for use of HPR with SSR's in 5 CFR 531.203(d)(2)(vii). Generally, SSR may NOT be used as HPR.
SSR = special salary rate; LP = locality pay; HPR = highest previous rate; RR = representative rate (step 4 of GS/GM, step 2 of FWS): MPR = maximum payable rate

Appendix III

PAY-SETTING POINTS OF CONTACT AT NASA

(insert link)